

1 UNITED STATES DISTRICT COURT  
 2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
 3 CHARLOTTE DIVISION

3 KANAUTICA ZAYRE-BROWN, )  
 4 )  
 4 Plaintiff, )  
 5 )  
 5 vs. ) DOCKET NO. 3:22-cv-191  
 6 )  
 6 NORTH CAROLINA DEPARTMENT OF )  
 7 ADULT CORRECTIONS, et al., )  
 8 )  
 8 Defendants. )

9  
 10 TRANSCRIPT OF MOTION HEARING  
 11 BEFORE THE HONORABLE MAX O. COGBURN, JR.  
 12 UNITED STATES DISTRICT COURT JUDGE  
 13 FEBRUARY 20, 2024

13 APPEARANCES:

14 On Behalf of the Plaintiff:

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3 *Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.*

4 THE COURT: Okay. I want to disabuse everybody about  
5 what this case is about. This case is not about which side has  
6 the best medical evidence. This case is about whether or not  
7 there is a legitimate hearing process being done by the State  
8 of North Carolina. If there is a legitimate disagreement  
9 between parties, the courts are not going to step into the  
10 middle of this because that's all we'll be doing, doctors on  
11 this side, doctors on that side, and making a call.

12 I thought, when I gave out my order, that it was pretty  
13 clear what this case was about. If the answer -- if -- if  
14 North Carolina has a procedure where the only person that  
15 really is important in that procedure says, in spite of the  
16 fact that this is a medical disability and may rise to the  
17 level of medical necessity, and that person goes, no, that can  
18 never happen and that's the decision-maker, that is not a  
19 legitimate procedure. And if that's what North Carolina is  
20 doing, they better change the procedure.

21 This is not about the plaintiff bringing in a bunch of  
22 witnesses that say, well, we think that we ought to be cutting  
23 these things off and fixing this thing up because that's what  
24 we do. This -- and then North Carolina says, well, we've  
25 looked at it and, at a legitimate hearing, we have decided this

1 is not a medical necessity. Then North Carolina is going to  
2 win if that happens.

3 But if the -- if -- if, every time, the answer is no  
4 because the head of this thing says it is always no and the  
5 people that are brought in on the committee look to that  
6 person, that is not a legitimate process, and North Carolina  
7 would lose because it does not yet have a legitimate process on  
8 this issue.

9 I understand this issue is a little odd for some people.  
10 There are some people who cannot -- who under no circumstances  
11 would ever realize that this happens, that people are born with  
12 one body and the mind of somebody else. But apparently that  
13 occurs. Science tells us that is occurring, and we're going to  
14 have to get our arms around it, whether we like it or not.

15 So when I issued this order, it was not my belief that  
16 everybody understands that. But I understand the plaintiffs  
17 want to bring in a bunch of physicians to say this kind of  
18 thing is a medical necessity and our side is better than their  
19 side. That doesn't matter.

20 What I'm looking at is whether North Carolina's side is  
21 even legitimate today on this issue or is Dr. Campbell the  
22 decider. And Dr. Campbell has written a paper that says it is  
23 never a medical necessity. You can't have a real process if  
24 that's it.

25 And I think it's going like 36 for nothing. Nobody's ever

1 been found to do it in North Carolina. I got a problem with  
2 that. I got a real problem with that. Not with the way North  
3 Carolina normally does these things, but on this issue -- on  
4 this issue.

5 That's the Court -- so I want somebody -- if there's  
6 somebody who can get up here and tell me North Carolina has a  
7 legitimate procedure, I want to hear what it is, and I want to  
8 hear that it happened because I got a problem. I got a real  
9 problem with what I've heard. That is, it's never been given,  
10 and the person that is the head of it says it can never happen.

11 And North Carolina is saying, oh, that's wrong, he didn't  
12 do that this time. No. If you put that person in charge, you  
13 have really swung and missed, North Carolina.

14 MR RODRIGUEZ: Good afternoon, your Honor. We have  
15 witnesses here today prepared to address that very issue.

16 THE COURT: That's what I wanted -- I want to know, is  
17 that a legitimate hearing? And I want to know, if there's a  
18 legitimate hearing, why it's never found to be a medical  
19 necessity. And does somebody have to kill themselves or come  
20 close to killing themselves to do that? I got a problem with  
21 that, too.

22 And somebody needs to open this up and figure this out,  
23 but it's not about whether -- I'm sure we got plenty of people  
24 where this operation is done which will say, oh, it's  
25 absolutely a necessity all the time. We can't get into the

1 middle of that kind of battle because otherwise North Carolina  
2 will be fighting on everything on medical necessity. There  
3 will be somebody coming in on the issue of medical necessity,  
4 and then judges will have to decide this.

5       What this judge is going to decide is whether this  
6 procedure is real or not. And, you know, you're going to have  
7 to overcome a hurdle when you have a head person that says it's  
8 never that way and it's never been given. Makes it hard for  
9 North Carolina to say, oh, we -- we understand that it's real,  
10 but the guy we put in charge of it doesn't believe in it.

11       I might do it -- I might go a different way than that, and  
12 I -- and I think the lawyers on your side would do it -- would  
13 do it, too, if you had to. But you got to play it the way you  
14 got to play it. So go ahead and put what you got on.

15       But this is not about you guys coming in and bringing a  
16 bunch of people to say we think differently about this. I  
17 understand that it's in your papers. I understand that's what  
18 you're saying.

19       The question is, is their procedure legitimate? If it is,  
20 you're going to lose because I can't -- the courts can't sit  
21 here and put the State to have to fight this every single time  
22 somebody comes up with a medical problem. We can't have people  
23 on both sides doing this.

24       But if North Carolina is not -- if it's not been a fair  
25 procedure, if the balance was already leaning heavily in one

1 way, then the Court's got a problem. Fire away.

2 MR RODRIGUEZ: Your Honor, we would call -- the first  
3 witness would be John Lewis Peiper.

4 MR. DAVIDSON: Excuse me, your Honor. I thought  
5 plaintiff was going to go first.

6 MR RODRIGUEZ: Well, we were until your Honor asked us  
7 to do so.

8 MR. DAVIDSON: Your Honor, Jon Davidson, representing  
9 the plaintiff.

10 THE COURT: Who are we going to put up? I don't want  
11 three hours of doctors saying -- I don't want three hours of  
12 doctors doing this because that's not what this case is about.  
13 This hearing is about whether this process is a fair process.  
14 If it's a fair process and they come out with a different idea,  
15 you lose. You lose because I'm not -- the Court's not going to  
16 get in the middle of that kind of thing.

17 MR. DAVIDSON: I understand that, your Honor. In your  
18 Honor's last order, one of the questions that your Honor  
19 identified was whether gender-affirming surgery is medically  
20 necessary for Ms. Zayre-Brown according to the WPATH standards  
21 of care. And we have an expert to talk about the WPATH  
22 standards of care and what they require.

23 THE COURT: Well, I think the first thing you need to  
24 do is question about them first as to whether they followed  
25 what they're supposed to. If they followed the Fourth

1 Circuit -- because this is going to go up to the circuit. I  
2 mean, it's going to go up to the circuit when this is over  
3 with -- and if they followed what the Fourth Circuit says  
4 they're supposed to be doing. So we got to figure -- we got to  
5 figure all this out.

6 So I want them to put on something to rebut it. So you've  
7 got one witness, one expert, or are you going to put on a pile  
8 of experts?

9 MR. DAVIDSON: One witness, one expert.

10 THE COURT: All right. That's fine, but let's let  
11 them go first.

12 MR RODRIGUEZ: Your Honor, while I go retrieve the  
13 witness, who's waiting outside, we have binders that we'd like  
14 to hand up for your Honor with the exhibits that we'll be using  
15 for the witnesses.

16 THE COURT: Good.

17 MR RODRIGUEZ: We have one for the witness, one for  
18 your Honor, and one for the --

19 THE COURT: Hopefully there's something in there where  
20 you've been able to find something where this has been found to  
21 be because my understanding is North Carolina, first of all,  
22 says that it understands that this is a mental issue -- a  
23 mental issue -- and that North Carolina recognizes it can be to  
24 the level of medical necessity. So North Carolina says that.

25 MR RODRIGUEZ: That's correct, your Honor.

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1 THE COURT: And then the head of it says no way.

2 MR RODRIGUEZ: Well, that's what we hope to address --  
3 address with --

4 THE COURT: That's what I got to hear.

5 MR RODRIGUEZ: I'll be right back.

6 May the witness approach the stand, your Honor?

7 THE COURT: Yes, sir.

8 THE CLERK: Please come forward and be sworn.

9 (Witness sworn.)

10 MR RODRIGUEZ: Does your Honor have a preference as to  
11 what counsel does when examining a witness, seated or standing?

12 THE COURT: No, no. Whatever makes you comfortable.  
13 It's hard enough to try cases without changing things around.  
14 So whatever you're comfortable doing, as long as you don't  
15 scare the witness.

16 MR RODRIGUEZ: Thank you.

17 **LEWIS JONATHAN PEIPER, DEFENDANTS' WITNESS, DIRECT EXAMINATION**

18 **BY MR. RODRIGUEZ:**

19 Q Good afternoon, Dr. Peiper. Can you please introduce  
20 yourself to the Court.

21 A Sure. Lewis Jonathan Peiper. I go by John. I'm a  
22 correctional psychologist. Personal note, father of two, live  
23 just outside of Raleigh, grew up in Georgia.

24 Prior to coming to North Carolina, I was working in the  
25 juvenile justice field in Georgia and in Virginia doing



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1 diversion work, working with folks that were in school-based  
2 care. Also worked in juvenile justice confinement areas.

3       Been in North Carolina since 2012. Been in a few  
4 different positions. Current position, director of behavioral  
5 health for the North Carolina prison system.

6 Q       Thank you. And you should have a binder there in front of  
7 you. Do you have a binder on the witness stand?

8           THE CLERK: Oh, sorry.

9           MR. RODRIGUEZ: That's all right.

10          You will soon have a binder in front of you.

11          THE WITNESS: No worries.

12 Q       If you flip to the document behind that first tab there,  
13 it should be a copy of your CV. Do you see that?

14 A       Yes, I see it.

15 Q       And is that an accurate copy of your CV at the time that  
16 you produced it?

17 A       Yeah. Yeah, at the time, this would be accurate.

18 Q       Okay. Now, if you flip to the document that's marked --  
19 oh.

20          MR. RODRIGUEZ: And, your Honor, we had previously --  
21 before I continue, we had previously discussed with counsel  
22 stipulating to the admissibility of the exhibits that we had  
23 exchanged.

24          THE COURT: Okay.

25          MR. RODRIGUEZ: So I'd like to move them, Defendants'

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1 Exhibits 1 through 14, into evidence based on that stipulation  
2 if your Honor permits.

3 THE COURT: If there's no objection.

4 MS. MAFFETORE: No objection, your Honor.

5 THE COURT: Then let them be admitted.

6 MR. RODRIGUEZ: Thank you.

7 (Defendants' Exhibit Nos. 1 through 14 were received in  
8 evidence.)

9 Q Dr. Peiper, can you turn to the document that's behind  
10 Tab 4 there.

11 A I'm there.

12 Q And this document is titled the "Evaluation and Management  
13 of Transgender Offenders." Is this the policy that the  
14 Department utilizes when reviewing requests for various  
15 gender-affirming interventions?

16 A Yeah. This is our Department's policy.

17 Q Okay. Can you turn to page 5 of that exhibit.

18 A I'm there.

19 Q And can you read to the Court and point out to the Court  
20 where on page 5 it explains the process for --

21 A Sorry. I went to No. 5.

22 Q Sorry. Page 5 of the exhibit.

23 A Page 5 of No. 4.

24 Q And if you can, can you explain to the Court how it's  
25 articulated in the policy what the Department's practice is for

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1 evaluating certain requests?

2 A Yes. So each request is evaluated on a case-by-case  
3 basis, and there are different considerations for routine  
4 versus nonroutine accommodations.

5 Q And can you read in subparagraph G there at the bottom?

6 A "All accommodation requests will be reviewed on a  
7 case-by-case basis, considering the offender's medical and  
8 mental health history, as well as risk safety profile."

9 Q Okay. And can you explain to the Court, how is it that  
10 the DTARC accomplishes that dictate there?

11 A Well, the DTARC is inter-disciplinary in nature, but each  
12 discipline brings forth its own individualized review, and then  
13 there's like a comprehensive review of all the records by the  
14 DTARC.

15 Q Okay. And now, with respect to the plaintiff's request,  
16 Mrs. Zayre-Brown's request --

17 A Yeah.

18 Q -- did the DTARC follow that process?

19 A Yes, we did.

20 Q Okay. Now, in the lead up to the February 17, 2022,  
21 meeting wherein the DTARC considered Mrs. Zayre-Brown's  
22 request, did you review records in anticipation of that  
23 meeting?

24 A Yeah.

25 Q Can you turn to the exhibit behind Tab 8, Defendants'

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1 Exhibit DX8.

2 A All right. I'm there.

3 Q And are you familiar with this set of records?

4 A Yeah. This would be a set of records from our electronic  
5 medical records, and it looks like it goes from 2017 through  
6 like 2022.

7 Q When you -- when you testified earlier about the review  
8 process, reviewing records, what sorts of records would you  
9 review in preparation for a DTARC meeting?

10 A There are some documents that are created specifically  
11 based off of the TARC process. We'd review those, we'd review  
12 evidence for crisis response, mental health assessments, mental  
13 health assessment updates, any instances of referral request.  
14 We would look at areas that related to maybe even outside care.  
15 You know, we'll request records with a release of information.

16 Q And were those sorts of records contained in the records  
17 that you reviewed for Mrs. Zayre-Brown's request?

18 A Yes. Oh, yeah.

19 Q And in flipping through DX8, are these records that  
20 you would have had access to and reviewed prior to the  
21 February 17th, 2022, DTARC meeting?

22 A Yes. These are from her records, would have had access to  
23 it and would have reviewed records of this sort during that  
24 process.

25 Q And do you recognize some of those records as records that

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1 you actually did review?

2 A Yes. It's -- it's been a little while since 2022, but  
3 there are some that I specifically recognize and remember.

4 Q And when you're reviewing these records, what is it that  
5 you're looking for as a director of behavioral health?

6 A Well, behavioral health, we're -- we're looking broadly  
7 about mental health symptoms, an individual's functioning -- in  
8 this regard, for the diagnostic criteria for gender dysphoria  
9 for Ms. Zayre-Brown -- and then the impact any of those mental  
10 health symptoms are having on her general functioning.

11 Q And how would -- how would those impacts manifest  
12 themselves in the record? How would you discern that to be the  
13 case by reviewing records?

14 A We'd see evidence over time, aspects of impairment. You  
15 would see it coming across -- an impairment can come across in  
16 some of the activities the person's engaged in, sleeping,  
17 eating patterns. Severe impacts, you might see a person lose  
18 -- we have this term in psychology, anhedonia. So they kind of  
19 lose interest in things that they otherwise would have interest  
20 in. So you really start to see that impairment and the impact,  
21 but you see it across multiple domains.

22 Q All right. And so in reviewing -- or after you reviewed  
23 Mrs. Zayre-Brown's records, did you arrive at a conclusion  
24 about the overall state of her mental health?

25 A Overall state, yeah. We concluded that, you know, there

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1 were moments of crisis, moments of instability. Overall,  
2 general stability. And any of the mental health symptoms  
3 appeared reasonably well-controlled.

4 Q When you say "we concluded," are you referring to the  
5 DTARC?

6 A We, the DTARC, and myself in reviewing the record.

7 Q Okay. So this was a conclusion that you arrived at on  
8 your own?

9 A This was information I brought to the DTARC.

10 Q And at the DTARC, did you share your assessment with the  
11 other members of the DTARC?

12 A Yes.

13 Q And so you did not defer to anyone else with respect to  
14 what your conclusion was as to the state of Mrs. Zayre-Brown's  
15 mental health?

16 A No, not about that.

17 Q Now, in addition to assessing Mrs. Zayre-Brown's overall  
18 mental health, which is what you just discussed, during the  
19 February 17, 2022, DTARC, were there other factors discussed or  
20 considered by the DTARC?

21 A Yeah. In addition to that, aspects about the review for  
22 medical necessity, and then there was the information about the  
23 medical literature review.

24 Q Okay. And what was the -- what was the conclusion about  
25 the medical literature review that was presented at the DTARC?

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- 1 A In short, that it was mixed, inconclusive.
- 2 Q And who provided that information?
- 3 A Our chief medical officer, Dr. Campbell, brought that
- 4 information.
- 5 Q Did you conduct any of your own review of the literature?
- 6 A No, not for that.
- 7 Q Did Dr. Campbell's discussion of the medical literature
- 8 in any way impact your assessment of the state of
- 9 Mrs. Zayre-Brown's mental health?
- 10 A No, no. Not the state of Ms. Zayre-Brown's mental health.
- 11 Q Did the DTARC document its review process in its
- 12 conclusion?
- 13 A Yes.
- 14 Q Can you turn to -- flipping backward now to Exhibit 5 --
- 15 and if you'll flip 5, 6, and 7 briefly, I want to ask you some
- 16 question -- one question about all three of those exhibits.
- 17 A Okay. I see them.
- 18 Q Are these documents that were created by the Department to
- 19 reflect the considerations done by the DTARC?
- 20 A Yeah. These three documents -- one's kind of a form-based
- 21 capturing the request itself and what the decision was.
- 22 Q And which document are you referring to?
- 23 A No. -- the thing behind No. 5.
- 24 Q Okay. So that would be DX5?
- 25 A DX5. And then there's also a -- we call it a case summary

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1 internally, but it's a document that summarizes the findings of  
2 the DTARC shared as part of that administrative review process  
3 and also for the larger record. That's DX6. DX7, this is the  
4 clinical note that we enter into the medical record.

5 Q Okay. And on DX5 -- 6 -- excuse me. Is there a portion  
6 of DX6 that you can point out to the Court that reflects your  
7 assessment and the DTARC's assessment of Mrs. Zayre-Brown's  
8 mental health?

9 A Yeah. There's aspects where -- in the paragraph at the  
10 end of the first page talking about the mental health and  
11 behavioral health, case reviews. There's a description towards  
12 the end of that that's talking about the new anxiety symptoms.

13 Q Well, I'm going to pause you there, Dr. Peiper. If you  
14 could look at that first hanging paragraph, I guess, on page 2  
15 of that exhibit. Can you read in the last sentence there of  
16 that paragraph?

17 A Which paragraph again?

18 Q Excuse me. The paragraph that appears in the first -- the  
19 top of page 2 --

20 A The top of page 2?

21 Q -- the last sentence of that paragraph.

22 A Thanks. "The patient's mood and anxiety symptoms appear  
23 well-controlled with psychiatric intervention, however recent  
24 progress notes from supportive counseling and therapy sessions  
25 indicate the patient has been heavily focused on the status of



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1 the final decision regarding her requested, desired surgery and  
2 experiencing related anxiety, frustrated mood."

3 Q And is that language familiar to you --

4 A Yeah.

5 Q -- that you just read?

6 A Yeah.

7 Q Does that encapsulate or capture the assessment of her  
8 mental health that you had testified to earlier?

9 A Correct, yes.

10 Q If you'd turn then to the next exhibit, DX 7. Is there a  
11 portion in this document that similarly reflects the  
12 Department's assessment of Mrs. Zayre-Brown's individual mental  
13 health?

14 A Yeah. There's a -- there's a similar section in this one,  
15 as well. And --

16 Q If you look at the --

17 A In the middle of the page, there's a review of patient's  
18 mental health and behavioral health record.

19 Q Okay. So that's one, two, three -- are you saying the  
20 fifth paragraph down?

21 A Correct, yes, the fifth down.

22 Q Can you read the -- I guess it's the last two sentences --  
23 three sentences of this paragraph, please.

24 A Sure. Similar to the case summary, "Mental health and  
25 behavioral health case reviews indicate no current evidence of

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1 any significant, comorbid mental health issues. Patient  
2 continues to demonstrate emotional and psychological stability  
3 with evidence of adequate coping skills.

4 "The patient's mood and anxiety symptoms appear  
5 well-controlled. The psychiatric interventions, however,  
6 recent progress notes from supportive counseling and therapy  
7 sessions indicate the patient has been heavily focused on the  
8 status of the final decision regarding her requested, desired  
9 surgery and experiencing related anxiety, frustrated mood."

10 Q And what was the basis of those statements?

11 A The record review.

12 Q Now, after reviewing a patient's chart --

13 A Uh-huh.

14 Q -- in the theoretical sense, not talking specifically  
15 about Mrs. Zayre-Brown --

16 A Okay.

17 Q -- but as your -- in your role as co-chair of the DTARC,  
18 if you're evaluating a request by a particular patient for  
19 gender-affirming intervention, if your assessment of the  
20 patient's mental health indicates that the patient is  
21 experiencing symptoms that are severe, debilitating, and  
22 interfering with activities, the daily living activities, and  
23 that are not well-controlled by existing interventions --

24 A Okay.

25 Q -- what would assessment have been or what would it be?

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1 A From the perspective of a psychologist and what I would  
2 bring and what we do bring into this discussion, that would be  
3 a necessary component for an increase in intervention.

4 Q So would your assessment be different if your -- your  
5 conclusion be different if your assessment of the mental health  
6 record indicated symptoms that exceeded and surpassed the types  
7 of symptoms you saw in Mrs. Zayre-Brown's case?

8 A Oh, yeah.

9 Q And in Mrs. Zayre-Brown's case -- in this case, the  
10 February 17, 2022, DTARC --

11 A Okay.

12 Q -- what was your overall assessment as to whether, from a  
13 psychological perspective, additional intervention was  
14 warranted?

15 A The assessment was that there was not additional  
16 intervention warranted.

17 Q And if your -- if the patient that you were reviewing,  
18 those records indicated that it were warranted, would that be  
19 true regardless of the state of medical literature?

20 A Oh, yeah.

21 Q Now, after you completed your review of Ms. Zayre-Brown's  
22 mental health records, did you conclude that she had severe  
23 symptoms associated with gender dysphoria that were not  
24 responsive to other interventions?

25 A No, we did not conclude that she had severe symptoms.

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1 Q And again, those symptoms -- can you describe to the Court  
2 what types of symptoms you're looking for when you're assessing  
3 that?

4 A So alluded to earlier, we're looking broadly across the  
5 individual's areas of functioning, different aspects of  
6 impairment. Some that were mentioned earlier might relate to,  
7 you know, like sleep, eating habits. Other areas might relate  
8 to the general impact on activities, social relational  
9 functioning. But generally, when you start to see the mental  
10 health symptoms impacting the individual severely, you're going  
11 to see multiple areas across their functioning.

12 Q I did not hear you reference suicidal ideation or  
13 self-harm attempts. Is it fair to say, then, that's not the  
14 metric you're applying?

15 A No, that's not the metric. Those do occur and, when they  
16 do, they're noted. But, no, that's not the only thing you  
17 would look for.

18 Q Do you recall ever seeing a copy of Dr. Campbell's  
19 position statement before the February 17, 2022, DTARC meeting?

20 A No, not before.

21 Q If you flip to Exhibit 9, you recognize this e-mail?

22 A Sorry. I'm getting there.

23 Q I'm sorry.

24 A There's a lot of medical records. All right. I'm there.

25 Q Do you recognize this e-mail?

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1 A Yes. Yes, I do.

2 Q And can you state the date and timestamp that's on this  
3 e-mail?

4 A February 17th, it's at 2107, so that's roughly 9:00 p.m.

5 Q 2107 p.m. is 9:00 p.m. military time. The attachment to  
6 this e-mail, if you flip to the next page, what is that?

7 A This would be a draft copy of that position statement that  
8 was referenced.

9 Q So this would have been the evening after the DTARC met to  
10 consider Ms. Zayre-Brown's request?

11 A Yes, sir, that's correct.

12 Q And is this the first time, to the best of your  
13 recollection, you would have seen a copy of Dr. Campbell's  
14 position statement?

15 A Yeah, yeah. This is the first time I saw this. This is  
16 when it was sent to me.

17 Q And Dr. Campbell eventually shared that position statement  
18 with other members of the DTARC?

19 A That is correct.

20 Q If you turn to page -- excuse me -- the next exhibit, 10,  
21 and do you recognize this e-mail?

22 A Yes. Yes, I do.

23 Q And this is dated when?

24 A March 22nd, 2022.

25 Q Now, after -- and what's attached here to this -- this

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1 e-mail?

2 A This is the position statement that was submitted.

3 Q Another draft? And who are the other recipients listed  
4 here on this e-mail?

5 A These were the active members of the DTARC.

6 Q Now, after this position statement was circulated to other  
7 members of the DTARC, what was the outcome of that?

8 A Frankly, it was pointed out that the statement might  
9 appear as a blanket ban, the terminology that was used, and it  
10 was immediately discarded at that point.

11 Q Okay. Was it -- would a blanket ban have been consistent  
12 with the practice of the DTARC?

13 A No, no, no. We were -- it was all individualized  
14 assessment up to that point on that day, in February of 2022,  
15 was moving forward, it still has been. So no, not consistent.

16 Q So has Dr. Campbell's position statement had any impact on  
17 whether the Department reviews requests for gender-affirming  
18 interventions on an individualized basis?

19 A No. No, we still do.

20 Q Can you turn to Exhibit 13 -- 12. Excuse me.

21 A I'm there.

22 Q Do you recognize this exhibit?

23 A Yeah. This looks like a list that was prepared during  
24 depositions, and it would have been related to other  
25 accomodation requests that were surgical in nature.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q Did you assist in preparing the information contained in  
2 this report?

3 A Yeah, I did.

4 Q And it looks like there's, by my count, 15 requesters  
5 listed here. Is that right?

6 A Yeah, it looks that way.

7 Q And a handful of the individuals making requests made  
8 multiple requests; is that right?

9 A Yes.

10 Q So by my count, the total is 25 requests. Does that seem  
11 right?

12 A Seems right, yeah.

13 Q Now, are there any prerequisites to making a request for  
14 gender-affirming surgery?

15 A No. No, there are not.

16 Q And can you describe to the Court how these requests were  
17 evaluated by the DTARC?

18 A Uh-huh. Yeah. In the -- the process I described. So  
19 there's the individual evaluations. Information is moved  
20 forward to the DTARC. There's the comprehensive review at the  
21 DTARC level. And any decision the DTARC makes would -- that  
22 relates to surgery would have to have an administrative review.

23 Q The far right column of this document there, it's titled  
24 "DTARC Recommendations." Can you describe some of the reasons  
25 why the DTARC declined to approve other requests for surgery?

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 A Yeah. There -- there are a variety. We do get  
2 individuals that are making the requests for other purposes,  
3 not for gender-affirming purposes. So some of those would be  
4 individuals that would be like contraindicated for that  
5 purpose.

6 There were be some other individuals we've seen that have  
7 some very significant co-morbidities, so large amounts of  
8 psychiatric instability, emotional -- compounded with some  
9 significant, uncontrolled personality disorders. We do see  
10 a -- we see a different mix of the population within the prison  
11 system than you see in the community. But, yeah, there's a  
12 variety of considerations, and those all come out through the  
13 assessment process.

14 Q And so with respect to each request that appears in this  
15 document, was the DTARC's review an individualized review?

16 A Yeah, yeah.

17 Q Were you ever pressured by Dr. Campbell or anyone else at  
18 the Department of Adult Correction to not approve for a  
19 gender-affirming surgery?

20 A To not approve? No.

21 Q Do you feel -- have you felt comfortable as a co-chair of  
22 the DTARC expressing yourself to the committee?

23 A Yeah. Yeah. It's a -- there's a portion in the flow to  
24 where it's even specifically said. So all that information is  
25 brought forward, and then there's an area where it's



## EXAMINATION OF LEWIS JONATHAN PEIPER

1 specifically reviewed.

2 Q In the list of other requests that were made, were any of  
3 these requests the hypothetical patient that we talked about  
4 before, where the record review indicated, in your mind as a  
5 psychologist, a patient with severe, debilitating symptoms that  
6 were not adequately controlled by other interventions?

7 A We have not actually seen a case that presented that yet.

8 MR. RODRIGUEZ: I don't have any further questions,  
9 your Honor.

10 THE COURT: Thank you.

11 Cross-examination.

12 **CROSS-EXAMINATION BY MS. MAFFETORE:**

13 Q Good afternoon, Dr. Peiper.

14 A Hey.

15 Q My name is Jaclyn Maffetore. I'm counsel for plaintiff,  
16 Ms. Zayre-Brown.

17 Is it fair to say that your experience personally treating  
18 transgender patients with gender dysphoria is fairly limited?

19 A You said personally treating?

20 Q Yes.

21 A Yes, that would be fair to say.

22 Q And you have been discussing that you considered  
23 Mrs. Zayre-Brown's request for vulvoplasty on February 17,  
24 2022, correct?

25 A Can you repeat that again?

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q You considered Mrs. Zayre-Brown's request for vulvoplasty  
2 on February 17th of 2022, correct?

3 A Yes. That was the request before the DTARC. That was the  
4 meeting of the DTARC, and it was considered then.

5 Q Thank you. And you stated that you participated in  
6 development of the case summary for that meeting, as well,  
7 correct?

8 A Yes, I did.

9 Q Okay. And is it correct that that case summary was  
10 developed both before and after that DTARC meeting?

11 A The case summary? So the process includes individuals  
12 submitting information as part of the review. So the case  
13 summary itself would not have been created until after, but  
14 aspects of what people bring in -- you're preparing what you  
15 bring in prior.

16 Q Okay. And just to be clear, when I'm saying "case  
17 summary," I'm discussing what is referred to as Defendants'  
18 Exhibit No. 8.

19 And so you testified that you prepared the mental and  
20 behavioral case-review portion of that case summary, correct?

21 A You said Exhibit 8?

22 Q Sorry. Exhibit 6.

23 A Okay. Sorry. Sorry. These are some thick pages. All  
24 right. I'm here.

25 MS. MAFFETORE: Can you -- Jon, will you switch me to

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 the overhead?

2       Okay. Can the Court see the overhead projector?

3 Q       Okay. And so the second paragraph encompasses the  
4 beginning of the mental health and behavioral health case  
5 review --

6 A       Okay.

7 Q       -- that you were discussing, correct, at the bottom of the  
8 page?

9 A       Yes.

10 Q       Beginning with "mental health and behavioral health case  
11 reviews indicated"?

12 A       Yes, I see it.

13 Q       Okay. And in compiling this mental health and behavioral  
14 health case review, you reviewed Mrs. Zayre-Brown's records,  
15 correct?

16 A       Correct.

17 Q       You have never met Mrs. Zayre-Brown yourself, correct?

18 A       I had never treated or evaluated her.

19 Q       You've never spoken with her, correct?

20 A       Not to any significant degree.

21 Q       And so you relied on the evaluations of others in  
22 considering Mrs. Zayre-Brown's request; is that correct?

23 A       I relied on the complete record.

24 Q       Which consists of the evaluations of other providers?

25 A       And it does consist of evaluations of others.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q And so leading up to the February 17th, 2022, DTARC  
2 meeting, you were coordinating communications with UNC  
3 Transhealth, correct?

4 A Yes.

5 Q And you understood that providers at UNC Transhealth  
6 believed Mrs. Zayre-Brown was an appropriate candidate for  
7 surgery based on the WPATH criteria; is that correct?

8 A Yes, I was aware.

9 Q Okay. And you noted in your case review that, in your  
10 review of the patient's related mental health and behavioral  
11 health record, it indicates the criteria identified by the UNC  
12 Transhealth program for --

13 (Reporter seeks clarification.)

14 MS. MAFFETORE: I'm sorry.

15 Q "Review of patient's related mental health and behavioral  
16 health record indicates the criteria identified by NCU's  
17 Transhealth program for appropriateness for surgery have been  
18 met. The patient has a well-documented, persistent transgender  
19 identity with a commitment for bottom surgery." Did I read  
20 that correctly?

21 A You are correct.

22 Q And additionally, in conjunction with your review, you  
23 spoke with Jennifer Dula, MSW, correct?

24 A LCSW, but yes.

25 Q And she's one of Mrs. Zayre-Brown's direct mental health

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 care providers, correct?

2 A She was at the time.

3 Q And in order to -- you solicited a letter from Mrs. Dula  
4 to help fulfill one of WPATH's criteria, correct?

5 A That is correct.

6 MS. MAFFETORE: I'd like to show you now what will be  
7 marked -- or what is marked as Plaintiff's 9.

8 And I'm happy to hand one up to the Court if the Court  
9 would like one, and I'm happy to hand one to defendant, as  
10 well. May I approach?

11 THE COURT: Are you all agreed these can go in, too?

12 MR. RODRIGUEZ: Yes.

13 MS. MAFFETORE: Yes, your Honor. Several of our  
14 exhibits overlap, so to the extent that they do, for ease of  
15 reference, I'll just refer to the ones that defendants have  
16 already introduced.

17 THE COURT: All right. And this one is one they  
18 haven't introduced or have introduced?

19 MS. MAFFETORE: They have not yet introduced it, your  
20 Honor, so at this time I'd seek to admit Plaintiff's Exhibit 9.

21 THE COURT: That will be admitted pursuant to the  
22 agreement of the parties. Thank you.

23 (Plaintiff's Exhibit No. 9 was received in evidence.)

24 Q Dr. Peiper, is this the -- what ultimately ended up being  
25 the letter that Jennifer Dula submitted regarding a request

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 that she draft some things so that Mrs. Zayre-Brown could meet  
2 the WPATH criteria?

3 A I believe it is. If this is the transgender accommodation  
4 summary in the medical record, which it looks like it is, that  
5 was the documentation pathway that Ms. Dula took to get that  
6 into the record. So if this is that, which it seems to be,  
7 then absolutely, yes.

8 Q Do you recognize the DAC stamp on the bottom of this piece  
9 of paper?

10 A I see it.

11 Q Do you recognize that that means this was produced to  
12 plaintiffs in discovery as a part of Mrs. Zayre-Brown's medical  
13 record?

14 A Okay. Then that would seem to be the same.

15 Q Okay. Thank you. So if you'll look to me, where I'm  
16 pointing, "based on" --

17 A Uh-huh.

18 Q -- "Per your request for a letter, Ms. Dula concluded  
19 that, based on the review of her records and the current  
20 assessment, it appears the next appropriate step for Ms. Brown  
21 is to undergo trans-feminine bottom surgery. The surgery will  
22 help her make significant progress in further treatment of her  
23 gender dysphoria." Did I read that correctly?

24 A You read that correctly.

25 Q And this transgender accommodation summary was a document

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 that was available to be reviewed by the DTARC, correct?

2 A Yeah. Yeah. This would have been before it.

3 Q All right. And so this would have been one of the records  
4 before the DTARC's consideration --

5 A Yes.

6 Q -- of February 17th, 2022?

7 In the preceding paragraph that starts with "despite,"  
8 Ms. Dula also wrote, "Despite these interventions, Ms. Brown  
9 continues to report clinically significant anxiety, depression,  
10 and distress associated with her gender dysphoria that has been  
11 documented consistently throughout her mental health  
12 treatment." Did I read that correctly?

13 A You did.

14 Q Okay. And so that information would have been before the  
15 DTARC's consideration?

16 A Yeah.

17 Q On February 17th of 2022, you believed that  
18 Mrs. Zayre-Brown still met the diagnostic criteria for gender  
19 dysphoria, correct?

20 A Yeah, yeah.

21 Q And one of those diagnostic criteria is clinically  
22 significant distress, correct?

23 A That is correct.

24 Q And so now I'd like to show you a document that is  
25 contained in DX8 that defendants have provided for us. It is

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 going to be page 370, but I'll also show it to --

2 A Thank you.

3 Q I'll try to show it to you on the projector for ease of  
4 your reference.

5 A Thanks.

6 Q Okay. And so first, looking at the top of this record,  
7 this is a mental health progress note, correct?

8 A Yes, it is.

9 Q And it's dated February 7th, 2022; is that correct?

10 A Uh-huh.

11 Q And that would be 10 days before the DTARC's consideration  
12 of Mrs. Zayre-Brown's request?

13 A Right.

14 Q And in this record, under "progress towards goals," it  
15 notes, "Offender is reporting increased dysphoria and  
16 associated anxiety," correct?

17 A Yes.

18 Q Okay. "She reports feeling increased distress over not  
19 having updated information on her gender-affirming surgery."

20 A Yeah, yeah. There was -- that was -- that's consistent,  
21 yeah.

22 Q Okay. And so this would have been one of the records  
23 before the DTARC's next consideration of Mrs. Zayre-Brown on  
24 February the 17th of 2022?

25 A Yeah, this is in the record.



## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q On February 17th, 2022, you believed that vulvoplasty  
2 would help Mrs. Zayre-Brown make significant progress in  
3 further treatment of her gender dysphoria, correct?

4 A Who are you asking wrote that?

5 Q You believed that on February 17th, 2022, correct?  
6 (Indicating.) Sorry about that.

7 A Where are you reading that?

8 Q Did you have a deposition in this case -- two depositions  
9 in this case?

10 A I did have.

11 Q Okay. Do you recall testifying that, on February 17th,  
12 you believed that vulvoplasty would help Mrs. Zayre-Brown make  
13 significant progress in further treatment of her gender  
14 dysphoria?

15 A I don't know that I recall those words, but yes.

16 Q Would it refresh your recollection if I showed you those  
17 words?

18 A I mean, it might, but I can tell you right now that, yes,  
19 that's part of her -- so during the deposition, we talked about  
20 the gender journey and that it is part of her journey. And so  
21 to the extent that that is part of her journey in that  
22 transition process -- okay. I'm sorry.

23 Q No. You believed, on February 17th, 2022, that  
24 vulvoplasty would reduce Mrs. Zayre-Brown's gender dysphoria,  
25 correct?

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 A So the two components of the gender dysphoria diagnosis  
2 are the incongruence and the dysphoria, the clinically  
3 significant distress. So by eliminating the incongruence,  
4 then, yes, you've eliminated the first step, the first test  
5 of that diagnostic criteria. So to that extent, I can say  
6 yes now.

7 Q And you also believed, on February 17th, 2022, that  
8 vulvoplasty would reduce Mrs. Zayre-Brown's anxiety, correct?

9 A So these all seem to have context to the questions.

10 Q Would you like for me to refresh your recollection  
11 regarding your prior testimony?

12 A Yeah, that would help.

13 MR. RODRIGUEZ: Jaclyn, which one is this?

14 MS. MAFFETORE: This is his individual deposition  
15 dated --

16 Q Do you see your name at the top there, Dr. Peiper, Louis  
17 Peiper, M.D.?

18 A Ph.D. -- (inaudible)

19 Q (Laughter.) They let you be an M.D.

20 A Yeah, if you could hold on one second.

21 MR. RODRIGUEZ: Could you tell me what page you're on.

22 MS. MAFFETORE: Sure. We are on 63 of your individual  
23 deposition, which was taken on May 1st of 2023. Let me know  
24 when you all are ready.

25 MR. RODRIGUEZ: Ready.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q Okay. And so, Dr. Peiper, looking at lines 13 here -- and  
2 please bear with me with this technology. Counsel, who is  
3 sitting next to me, Mr. Davidson, asked you, "Do you believe  
4 that receiving vulvoplasty likely would reduce her experience  
5 of anxiety?" Did I read that correctly?

6 A Yeah. So what was the --

7 Q And your answer there --

8 (Reporter seeks clarification.)

9 THE WITNESS: Apologies.

10 THE COURT REPORTER: That's okay.

11 Q My question was, did I read that correctly?

12 A I was wondering about the context that is -- I can't see  
13 the top of that.

14 Q (Indicating.)

15 A Further up. 4.

16 Okay. So during the deposition -- and I don't know if  
17 this was you and me or somebody else.

18 MR. DAVIDSON: (Indicating.)

19 THE WITNESS: Yeah, okay. It's nice to see you in  
20 person, by the way.

21 A There was discussion about the anxiety that was being  
22 referenced somewhere.

23 Q Right. And you'll see here that the prior question my  
24 counsel, to my left here, says, "No, no. Just in general, when  
25 we talked previously about her experiencing symptoms of anxiety

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 related to gender dysphoria, and I'm trying to understand what  
2 you believe. I'm going to try a yes-or-no question."

3 So this is in general --

4 A Okay.

5 Q -- and the question was, "Do you believe that receiving  
6 vulvoplasty likely would reduce her experience of anxiety?"

7 Did I read that correctly?

8 A You are, yes.

9 Q Okay. And then your answer was, "Yeah, and I recall us  
10 having those discussions during that particular set of  
11 questions. I don't know that we got to a point of saying one  
12 symptom or the other, but, as it relates to kind of a general  
13 consideration, she's wanting it, she's waiting for it, it's  
14 part of her transition. I mean, I could certainly see her  
15 finding, you know, this is a positive relief from having it.  
16 So yeah, I could say yes." Did I read that correctly?

17 A Yeah. That sounds very similar to what I just said, as  
18 well.

19 Q All right. So then, Dr. Peiper, did you believe, on  
20 February 17th, 2022, that vulvoplasty would reduce  
21 Mrs. Zayre-Brown's anxiety?

22 A The context in which you just gave it, I can give that an  
23 absolute qualified yes. To the extent that you're taking it in  
24 other directions, I don't know. We'd have to discuss that --

25 Q The only direction I'm taking it, sir, is the question

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 that I'm asking you right now.

2 And on February 17th, 2022, you believed that  
3 Mrs. Zayre-Brown met all of the WPATH criteria for surgery,  
4 correct?

5 A Yes, absolutely.

6 Q All right. Now I'd like to go back to the case summary  
7 with you --

8 A Okay.

9 Q -- which we were previously discussing as Defendants'  
10 Exhibit 6. I'm going to show you this one because it's not in  
11 a binder, and I think that will be easier.

12 A All right.

13 Q It also happens to be Plaintiff's Exhibit 6.

14 A Okay.

15 THE COURT: And this one is one that's already in?

16 MS. MAFFETORE: Yes, your Honor.

17 THE COURT: Okay.

18 MS. MAFFETORE: And has already been admitted as  
19 Defendants' Exhibit 6.

20 THE COURT: Plaintiff's Exhibit 6? No. I'm sorry.  
21 Defendants' Exhibit 6. Okay. Very good.

22 Q Okay. So, Dr. Campbell, the -- I'm showing you -- or  
23 sorry -- Dr. Peiper, I'm showing you the medical analysis  
24 portion of the case summary, which is on the second page, which  
25 is DAC 3400.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 A Uh-huh.

2 Q It's gone blurry on me.

3 A Yeah. I can see it on my paper.

4 Q Great. The medical necessity determination in this case  
5 summary document is contained in this medical analysis,  
6 correct?

7 A There is -- in this case summary, there's description of  
8 the medical necessity, and there's description of the medical  
9 review, the literature review.

10 Q So the medical necessity determination is contained in the  
11 medical analysis, correct?

12 A Yes, under that heading. You are correct, yeah.

13 Q Thank you. Dr. Campbell was responsible for drafting the  
14 medical analysis, correct?

15 A Yeah. To a large extent I would say yes.

16 Q Okay. Dr. Campbell was the only person who presented to  
17 the DTARC regarding the medical literature regarding  
18 gender-affirming surgery, correct?

19 A The medical literature?

20 Q Yes.

21 A Yes.

22 Q All right.

23 A Well, I referenced some stuff, as well, but yeah, this  
24 here, this presentation, was Dr. Campbell's.

25 Q Okay. So do you recall testifying previously that

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Dr. Campbell was the only person who presented to the DTARC  
2 regarding the literature review?

3 A Yes. That's what this literature review is and, yes,  
4 Dr. Campbell presented that.

5 Q Thank you. So Dr. Campbell is the medical authority,  
6 correct?

7 A Chief medical officer, yes.

8 Q Okay. And so in the second paragraph there, where it  
9 says, "Based on this review, it is the determination of the  
10 medical authority," "medical authority" would be referring to  
11 Dr. Campbell; is that correct?

12 A Likely.

13 Q Okay.

14 A I can't say for certain, but yeah.

15 Q And so Dr. Campbell -- being the author of the medical  
16 analysis, it was Dr. Campbell's decision to include a  
17 discussion of de-transition within this document. Would that  
18 be correct?

19 A Yeah.

20 Q Okay. You do not have any concerns about de-transition as  
21 it relates to Mrs. Zayre-Brown, correct?

22 A De-transition? No. And that's kind of part of the -- we  
23 used the term "journey" before.

24 Q Okay.

25 A There's ebbs and flows in people's process.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q Okay. So these paragraphs that span from 3402 to 3403 of  
2 this document, beginning with "there is a growing body of  
3 research" and then flowing into the next page regarding young  
4 people --

5 A Okay.

6 Q -- the decision to include those five -- those five  
7 paragraphs in this case summary, that was Dr. Campbell's  
8 decision, correct?

9 A I'm sorry. Can you repeat that?

10 Q The decision to include that discussion of de-transition  
11 was Dr. Campbell's decision, correct?

12 A I would assume it was his decision. He provided the  
13 information.

14 Q And it's your belief that that is not of any concern  
15 regarding Mrs. Zayre-Brown; is that correct?

16 A I don't think the age range would be relevant to adults.  
17 And also, I'm not particularly concerned about Ms. Zayre-Brown  
18 having any regrets about her transition process.

19 Q Okay. So you would consider that discussion in the case  
20 summary to be irrelevant to Mrs. Zayre-Brown's request?

21 A To her specifically, yeah. But to the medical literature  
22 broadly, it seems that that was part of the medical literature.

23 Q Okay. Nobody on the DTARC disagreed with Dr. Campbell's  
24 interpretation of the literature; is that correct?

25 A Yeah.



## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q And you personally accepted Dr. Campbell's interpretation  
2 of the literature?

3 A Of the medical literature review? I did.

4 Q Okay. And you testified previously with my counsel across  
5 the aisle that you did not do any independent medical  
6 literature review of your own; is that correct?

7 A That is correct.

8 MS. MAFFETORE: I don't have any further questions for  
9 this witness at this time.

10 THE COURT: All right. Thank you.

11 Any redirect?

12 MR. RODRIGUEZ: No, your Honor. No redirect.

13 THE COURT: All right. Thank you, sir. You may come  
14 down.

15 THE WITNESS: Thank you, sir. Do I leave this up  
16 here?

17 THE COURT: Yes, sir.

18 THE WITNESS: Okay. Thanks.

19 (Witness excused.)

20 MS. BRENNAN: Your Honor, may we call the next  
21 witness?

22 THE COURT: Yes, ma'am.

23 MS. BRENNAN: At this time we would call Dr. Arthur  
24 Campbell, and we're just going to step out and get him.

25 THE COURT: Okay. Very good.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 (Witness sworn.)

2 **ARTHUR L. CAMPBELL, III, DEFENDANTS' WITNESS,**

3 **DIRECT EXAMINATION BY MS. BRENNAN:**

4 Q Good afternoon, Dr. Campbell.

5 A Good afternoon.

6 Q Could you please state your full name and introduce  
7 yourself to the Court.

8 A Yes, sure.

9 So I am -- good afternoon, your Honor. I'm Arthur L.  
10 Campbell, III, the last Campbell. I am a North Carolina  
11 native, been married to my high school sweetheart for a little  
12 over 40 years now, proud father of four -- two social workers,  
13 an elementary school teacher, and a probation/parole officer.  
14 I'm a third generation soldier, having served 35 years in  
15 the active Army, multiple combat deployments in support of both  
16 Iraq and Afghanistan, several other overseas deployments in  
17 support of other military operations.

18 In addition to my operational and combat experience, I  
19 also served as a dean of the Joint Special Operations Medical  
20 Training Center, and I'm an associate professor of the  
21 Uniformed Services University of health sciences. I culminated  
22 my career as a colonel and a commander of a special operations  
23 medical group.

24 I am a flight surgeon and a board-certified family  
25 physician with over 25 years of clinical practice, and I

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1 currently serve as the chief medical officer for the North  
2 Carolina Department of Adult Corrections.

3 Q Dr. Campbell, you should have a notebook in front of you.  
4 Do you have access to that?

5 A Yes, ma'am.

6 Q I'm going to be referring to some exhibits that are  
7 contained in the notebook, and they're -- they have some tabs,  
8 so I'll let you know where we're going.

9 Could you please turn to Defendants' Exhibit 2, just  
10 behind the 2 tab.

11 A Yes, ma'am.

12 Q Do you recognize this as a version of your CV that you  
13 provided during this case?

14 A I do.

15 Q And was this an accurate representation of your CV as of  
16 the point that you provided it?

17 A Yes, ma'am.

18 Q Okay. And it looks like, if you look at pages 2 through 4  
19 of the document, that details some of your professional work  
20 experience as it relates to the military in particular. Is  
21 that right?

22 A Yes, ma'am.

23 Q Okay. And if you look at page 1, flip backwards to  
24 page 1, where the heading says "Professional Work Experience,  
25 Civilian," that details your civilian work experience; is that

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 right?

2 A Yes, ma'am.

3 Q And the position at the top -- it says "10/20 to present,  
4 chief medical officer, North Carolina Department of Public  
5 Safety Prisons." Does that contain a description right there  
6 of your current position?

7 A Yes, ma'am.

8 Q Is that an accurate description of your current position?

9 A It is.

10 Q Could you just very briefly in your own words talk about  
11 what you currently do in your role?

12 A Yes, ma'am.

13 So, your Honor, as the chief medical officer for the  
14 Department of Adult Correction, I'm responsible for the  
15 comprehensive medical care -- so that's merged into acute and  
16 routine and chronic -- for more than 32,000 individuals  
17 incarcerated at 53 prisons, including two very large inpatient  
18 hospital facilities, across 46 counties in North Carolina.

19 In that regard, I'm responsible for the recruiting,  
20 credentialing, and professional practice of more than  
21 150 licensed, independent practitioners, more than 400 nurses,  
22 and several administrative medical support staff.

23 Q Doctor, I'd like to now ask you some questions about  
24 whether individualized consideration is provided to those  
25 seeking gender-affirming surgery by the Department.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 A Okay.

2 Q Are you familiar with what we've been calling the EMTO  
3 policy?

4 A Yes, ma'am.

5 Q And if you look at Exhibit 4, is that the EMTO policy?

6 A It is.

7 Q Does the Department policy require individualized  
8 consideration of requests for gender-affirming surgery?

9 A Yes, ma'am, it does.

10 Q And is that something that you have understood to be the  
11 case since you came to the Department?

12 A It is.

13 Q Is it your impression that other members of the DTARC also  
14 understood this requirement?

15 A Yes, ma'am.

16 Q And has it always been the case, since you joined the  
17 DTARC, that this policy has called for this individualized  
18 review?

19 A It has.

20 Q Does the DTARC follow this requirement in the policy?

21 A Yes, ma'am, we do.

22 Q Can you please explain to the Court the way in which  
23 review is individualized for all requests?

24 A Yes, ma'am.

25 So, your Honor, the -- what generally happens is that we

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1 receive notification from the Facility Transgender Accomodation  
2 Review Committee of cases that are being forwarded to us at the  
3 division level, the DTARC. We receive those in advance of the  
4 committee meeting.

5 And each of us, each member of the committee, has a  
6 respective area that they are required to review in preparation  
7 for that meeting so that it -- the operations security  
8 individual on the committee will review all of those  
9 appropriate documents.

10 We have a PREA -- the Prison Rape Elimination Act --  
11 director who also sits on that committee, will review all  
12 pertinent aspects of each individual's record in that regard.  
13 We have both psychologists and psychiatry that are going to  
14 focus on their particular area of expertise, mainly the mental  
15 health and behavioral health notes.

16 And myself, as a medical officer, I will not only review  
17 the mental health and behavioral health notes, but I also  
18 review all of the medical notes associated with that particular  
19 individual in preparation for the committee meeting.

20 Q I now want to ask you some questions about your review of  
21 Ms. Zayre-Brown's case.

22 A Okay.

23 Q Did you review Ms. Zayre-Brown's medical and mental health  
24 records in preparation for the DTARC meeting at which her  
25 request was discussed?

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1 A Yes, ma'am.

2 Q Okay. And if you could turn to Exhibit 8. It's a large  
3 document there. It's two-sided.

4 Are these records that you would have reviewed in  
5 preparation for the meeting?

6 A Yes, ma'am.

7 Q Did you review all of the records?

8 A I did.

9 Q And are there any records that you ignored or didn't  
10 consider as part of your review?

11 A No, ma'am.

12 Q Were you aware of any indications of distress in these  
13 records?

14 A Yes, ma'am. There were episodic periods of time where  
15 Ms. Brown would have some episodes of distress. From my review  
16 of those records, they seemed to be often situational and  
17 generally short-lived without any severe implications.

18 Q Did you make an overall assessment of the state of  
19 Ms. Zayre-Brown's mental health prior to the DTARC?

20 A Yes, ma'am, I did.

21 Q And what was your individual assessment?

22 A So, your Honor, my individual assessment was that, from  
23 review of all the notes that I reviewed, that Ms. Brown was  
24 psychiatrically and emotionally stable and actually had very  
25 good indications of adapting well.

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1       There were indications in the record that she was very  
2 forward-thinking. She was actively planning and making plans  
3 for endeavors that she was going to pursue upon release from  
4 prison. She was actively engaged in both occupational and  
5 academic endeavors for careers once she leaves prison.

6       And I also reviewed the appropriate medical notes that  
7 occurred around the same time as the DTARC. So I reviewed a  
8 note from her primary care manager that was completed about two  
9 weeks before the DTARC. And the concluding diagnosis of the  
10 primary care manager at the facility was that her gender  
11 dysphoria was chronic, stable, and improved.

12       I also reviewed the last endocrinology note from  
13 Dr. Carracio, who's the UNC endocrinologist, that occurred a  
14 few months before the DTARC. And his concluding diagnosis on  
15 his note was her that gender dysphoria was chronic, stable, and  
16 markedly improved.

17       All of those things together led to my conclusion that, at  
18 this point, the current treatment plan seemed to be  
19 sufficiently addressing the underlying condition of dysphoria  
20 for Ms. Brown, and, therefore, there was no indication that  
21 additional treatment or accelerated treatments were indicated  
22 at that current time.

23 Q       Did anyone else on the DTARC share with the DTARC their  
24 assessments of Ms. Zayre-Brown's mental health?

25 A       Yes, ma'am, they did.



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1 Q Who would that be?

2 A So each member of the committee would do that. For  
3 behavioral health and mental health, it would be Dr. Brian  
4 Sheitman and Dr. John Peiper.

5 Q And did Dr. Peiper and Dr. Sheitman share their own  
6 assessments?

7 A They did.

8 Q And what did they share with the DTARC?

9 A So their assessments really mirrored those that I had  
10 independently come to in my review. And they felt that --  
11 again, that Ms. Brown was stable, adapting well and, again, all  
12 the things I mentioned, was actively planning and certainly was  
13 having no acute episodes of distress or other indications of  
14 additional treatment being needed.

15 Q And how did these reviews of Ms. Zayre-Brown's mental  
16 health and medical records factor into the decision that was  
17 made by the DTARC?

18 A So there are the primary consideration in every case that  
19 we review.

20 Q And we're going to get to your assessment of the medical  
21 literature in just a moment in more detail, but could you  
22 briefly sum up what you had concluded prior to the DTARC  
23 regarding the medical literature?

24 A Yes, ma'am.

25 So, your Honor, I came to two general conclusions when I

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1 reviewed the medical literature. The first was that, of all  
2 the evidence that I was able to review, there is no studies  
3 that definitively conclude that gender-affirming surgery will  
4 consistently alleviate or eliminate the symptoms of gender  
5 dysphoria.

6       The second conclusion I came to was that the majority of  
7 the studies that are referenced in support of gender-affirming  
8 surgery are generally going to be retrospective, qualitative  
9 studies. On the evidentiary scale of evidence that we use to  
10 determine treatment recommendations for our patients, that is  
11 incredibly low on that scale.

12       And of the studies that are available, the variables used  
13 within each study are significantly different. So none of  
14 those studies really consistently examine the same factors. So  
15 you get variable variables that are in each of those studies.  
16 And the results of all those studies, quite frankly, are mixed  
17 when it comes to this particular aspect of treatment.

18 Q       Did you share that with the DTARC when it had its  
19 discussion of Ms. Zayre-Brown's case this February of 2022?

20 A       I did.

21 Q       And how did that assessment of the state of the literature  
22 factor into the DTARC's decision?

23 A       So, your Honor, when we -- in every patient encounter,  
24 whether it's on the DTARC or I'm reviewing a patient before the  
25 DTARC or any patient that I see in clinic or anywhere, there

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1 are two factors we consider: that individual's current clinical  
2 status and the medical literature or the status of that medical  
3 literature as it currently exists. So that's the same thing  
4 that applies in this case.

5 Q And is that something that would also be considered in  
6 other cases?

7 A Yes, ma'am.

8 Q So something that's not as individualized, is that fair?  
9 The medical literature.

10 A Correct. They can be individual -- so you may have  
11 particular studies are more appropriate for particular  
12 patients, but in general the studies are going to really  
13 support that procedural intervention that you're evaluating.

14 Q And was your assessment of the medical literature a bar to  
15 surgery in Ms. Zayre-Brown's case?

16 A It was not.

17 Q Why not?

18 A So, your Honor, there are -- there are always exceptions  
19 to any procedure or any intervention that we do. There are  
20 many procedures in prison that -- surgical procedures, for  
21 instance, that are -- we consider medically not necessary. But  
22 there can be times when those can become medically necessary.

23 A good example I like to give is inguinal hernias. So  
24 generally, inguinal hernia is not a medical necessity that  
25 needs to have surgery. However, if that hernia is

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1 incarcerated, is causing significant impairment, then it can  
2 become medically necessary. The same thing applies in this  
3 particular surgery.

4 Q And did the concerns that you saw and the mixed evidence  
5 that you saw in the medical literature make denial a forgone  
6 conclusion in any of the cases that the DTARC has reviewed?

7 A No, ma'am.

8 Q Okay. I'd like to now turn to talk about your position  
9 statement.

10 A Okay.

11 Q If you could can look at Exhibits 9, 10, and 11, my  
12 question is whether these are all variations of the position  
13 statement, as we've been referring to it.

14 A Yes, ma'am.

15 Q So if you look at Exhibit 9, it looks likes this is a  
16 version that you sent to Dr. Peiper the evening after the  
17 DTARC. Is that right?

18 A Yes, ma'am, that's correct.

19 Q And if you look at Exhibit 10, this is an e-mail that  
20 you sent to the members of the DTARC in March -- I would say  
21 March 22nd, 2022, with an attachment that was the DTARC  
22 position statement or something that you called the DTARC  
23 position statement. Do you see that?

24 A I do.

25 Q And then the third one, is this another version of the

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1 position statement?

2 A Yes, it is.

3 Q That's DX11?

4 A That's correct.

5 Q Okay. Could you please explain generally what this  
6 position statement was?

7 A Yes, ma'am.

8 So, your Honor, this position statement -- I think the  
9 first thing worth emphasizing is that this was a draft, and  
10 more accurately a rough draft. I need to go back just briefly,  
11 if I may, in history as to how this document emerged.

12 In my capacity as the chief medical officer, we make  
13 medical-necessity determinations all the time. We get upwards  
14 of a hundred thousand referrals a year that we need to review.  
15 And medical necessity is at the base of every single one of  
16 those consults.

17 So some -- not long after I assumed my position, I began  
18 to try to understand what encapsulates medical necessity. What  
19 are the tenants? What are the things that determine medical  
20 necessity? And as I was doing that and I was doing my work on  
21 the DTARC, I took those tenants and those basic principles and  
22 applied them specifically to gender-affirming surgery.

23 So this was meant to be -- it was not meant to be a peer  
24 review journal article. It was not meant to be a comprehensive  
25 assessment of every study out there. It was really to provide

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1 the members of the DTARC a common operating picture or a common  
2 baseline understanding of the medical literature as it exists  
3 today.

4 Q And in your position statement, what did you conclude  
5 generally regarding medical necessity of gender-affirming  
6 surgery?

7 A So generally speaking, there -- again, if you're treating  
8 -- you're treating dysphoria. So generally speaking, if an  
9 individual's symptoms are adequately controlled with the  
10 current treatment regimen -- we do a risk-benefit analysis of  
11 every patient that we see. And if their treatment is adequate  
12 and they're doing well, then that risk-benefit analysis does  
13 not necessarily tip to the point of making this a medical  
14 necessity.

15 Q So there is a conclusion in the position statement that,  
16 generally speaking, gender-affirming surgery is not medically  
17 necessary; is that right?

18 A That's right.

19 Q Okay. Did you intend for there to be any exceptions to  
20 that?

21 A No, ma'am. Oh, yes, ma'am. I did intend for there to be  
22 exceptions.

23 Q And I just want to be clear on this because there's strong  
24 language in the position paper.

25 Did you mean to suggest that surgery could never be

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1 medically necessary for someone with gender dysphoria?

2 A No, ma'am.

3 Q Can you talk about what type of exceptions there could be  
4 to your general conclusion?

5 A Yes, ma'am.

6 So, your Honor, the underlying condition that we're  
7 treating is the dysphoria, which the -- probably the easiest  
8 way to succinctly characterize that is a profound unhappiness  
9 or dissatisfaction.

10 So when you're evaluating a patient that has dysphoria of  
11 any sort, not just gender dysphoria, you want to evaluate the  
12 things that -- the way that could be manifested in that  
13 particular patient.

14 So you want to look at things like their sleep habits.  
15 Are they at an extreme of having sleep disturbances? You  
16 ascertain if they continue to maintain interest in activities  
17 that they normally enjoy doing. You ask if they spend a lot of  
18 time perseverating or focusing on things, blaming themselves or  
19 feeling guilty about things that are not their fault. You ask  
20 about their energy level. Is it at either extreme of the  
21 energy level?

22 You ask about concentration. Are they able to focus? And  
23 they able to stay on-task? You ask about their appetite, again  
24 in either extreme. You ask about psychomotor agitation. So  
25 are they anxious or agitated or are there -- do they have

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1 feelings of aggression? You also look at any suicidal ideation  
2 or any kind of self-injurious behavior.

3 All of those factors together allow you to make an  
4 assessment of what I would say is the severity of their  
5 illness. And the way you capture that is, are those symptoms  
6 disabling or impairing enough that they -- that they impair  
7 some social or occupational or other important area of function  
8 in their life? If that's the case, then you can determine that  
9 their gender dysphoria is significant enough to require some  
10 kind of intervention.

11 Q If that were the case, if you saw those debilitating  
12 symptoms, would you support surgery?

13 A Yes, ma'am, conceptually.

14 So I think the first thing you do when you determine that  
15 a patient is not responding as you would expect based on the  
16 current treatment regimen, then -- you first look at your  
17 current treatment regimen. Are there modifications you can  
18 make within that current treatment regimen to be effective, to  
19 meet your therapeutic goal? And if there are not, you need to  
20 step up to the next level of treatment, which in this case  
21 would potentially be gender-affirming surgery.

22 Q Did you see Ms. Zayre-Brown's case as a case that  
23 presented that kind of debilitating, severe symptoms?

24 A No, ma'am.

25 Q And has that case ever been presented to the DTARC?



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1 A Not yet, no, ma'am.

2 Q Okay. If it was presented, would you be open to surgery?

3 A I would.

4 Q I want to ask you about the exhibits we just looked at  
5 where you were sharing this document. You had sent it to other  
6 members of the DTARC. Why did you do that?

7 A So I -- I guess I'll go back to the first -- that would be  
8 Exhibit 9. So that was the e-mail to Dr. Peiper.

9 So I had initially verbally presented my basic  
10 understanding of this document, you know, to the DTARC at that  
11 particular meeting. If I'm not mistaken, this may have been  
12 the same night, after that. As Dr. Peiper and I both serve as  
13 co-chairs of that committee, I sent it to him for his initial  
14 review.

15 Q And then you later, it looks like, in March sent it to the  
16 entire DTARC. Why did you share it with the group that is the  
17 DTARC?

18 A Yes, ma'am. So after Dr. Peiper and I had both viewed  
19 this document, the plan next was to provide this to the DTARC  
20 so that they have a -- at least a copy of this rough draft as  
21 we had presented it verbally at that committee. So again,  
22 getting back to them having a baseline understanding of the  
23 status of the medical literature.

24 Q Was any version of this position paper ever adopted?

25 A No, ma'am.

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1 Q Why not?

2 A So as you stated -- and I have to admit there was very  
3 strong language in this that could have been interpreted as a  
4 prohibition against surgery. Again, this was a rough draft. I  
5 have to again emphasize that.

6 Had this document been proceeded, there would have been  
7 multiple edits and clarifications and modifications of this  
8 document before it finally reached what would be its final  
9 version. But because we never proceeded with those things, it  
10 never progressed past this point that you see here.

11 Q And did you have intentions with respect to changing the  
12 process?

13 A So one aspect of this -- one of my goals with this, your  
14 Honor, was that -- that -- I was really attempting kind of --  
15 as I referenced about the medical-necessity statement, to  
16 standardize this process, to try to develop some criteria that  
17 could be utilized in a uniform basis across the board.

18 And ultimately -- and I -- because we didn't work through  
19 this, I never really fully developed what this could include,  
20 but my concept was that we could develop efficiencies in how we  
21 review these cases so that we would review these cases more  
22 analogous to how we review requests for exceptions to other  
23 surgeries which we generally consider to be not medically  
24 necessary. But because it was a draft, we never progressed to  
25 that point.

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1 Q And if you look at DX10 -- this is the cover e-mail when  
2 you sent it out to the DTARC -- if you look in the middle of  
3 that page, you made a statement, "If approved, the position  
4 statement would be forwarded to our FTARCs and no further  
5 consideration would be given to GRS within our system." What  
6 did you meet mean by that?

7 A So I think so that's referencing back to what I just  
8 referenced, your Honor, is that my -- the concept I had in my  
9 head at the time, which never got to come to fruition, is that,  
10 if -- just as we do with other surgery cases, if we felt that  
11 an individual had criteria that would qualify or, you know,  
12 make them approved for an exception to a surgery that's not  
13 normally medically necessary, we may be able to avoid some of  
14 the current processes we currently have in place. So this  
15 could be processed more analogous to how we process other  
16 surgical cases. So that was the intent of the statement.

17 Q Was there ever an e-mail vote on this statement that you  
18 recall?

19 A No, ma'am.

20 Q And was the Department's position on individualized review  
21 ever changed?

22 A No. It's always been the same.

23 Q And did you accept that this position paper would not be  
24 adopted?

25 A Of course. Yes, ma'am.

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1 Q And have you continued to follow the EMTO policy as it  
2 relates to providing individualized review?

3 A I have.

4 Q Would you do that even if you disagreed with the policy?

5 A Yes, ma'am.

6 Q Do you still have concerns about the quality and  
7 conclusions of the medical evidence for gender-affirming  
8 surgery?

9 A I do. Although this document was never adopted, I think  
10 that the research -- as I discussed, with the quality of  
11 studies and the conclusions of those studies, particularly when  
12 you look at the efficacy towards the treatment of  
13 gender-affirming surgery, especially in the intermediate and  
14 long term, those concerns are valid.

15 And it constantly requires that -- when you have a  
16 situation where a condition has mixed results and there's no  
17 definitive data, and it's clear that additional research is  
18 needed in that area, that raises the threshold to where that  
19 risk-benefit analysis tips towards having to proceed with that  
20 particular intervention.

21 Q And was it true in February of 2022 that, if a case had  
22 been presented of severe or debilitating gender dysphoria that  
23 was not adequately controlled by other treatments, that you  
24 would have voted to approve surgery?

25 A Yes, ma'am.

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1 Q And is that true now?

2 A It is.

3 Q I want to turn now and ask you some questions about the  
4 WPATH. Are you familiar with the WPATH standards of care?

5 A Yes, ma'am, I am.

6 Q How are you familiar with them?

7 A So as I assumed my duties on the DTARC, that was the first  
8 reference that I -- that I went to. That is the most broadly  
9 utilized reference out there. So I immediately began reading  
10 that document at that time. And I think it was Standard of  
11 Care 7 was the version that we were operating under.

12 Q And do you read the WPATH standards to provide sufficient  
13 criteria for a medical-necessity determination?

14 A No, ma'am.

15 Your Honor, the WPATH does not -- does not provide what I  
16 would consider an articulable or operational definition for  
17 medical necessity that we, at the primary-care level as  
18 providers, can utilize.

19 The WPATH operates under a presumption that all  
20 gender-affirming care is not medically necessary, and it's  
21 based on the patient's goals and desires. What they list as  
22 criteria or eligibility requirements for the surgery are what  
23 are traditionally in medicine considered to be  
24 contraindications, or reasons you don't proceed with surgery.  
25 But they don't provide a clearly articulable list of criteria

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1 that would make this medical necessity. Again, they have the  
2 presumption that it is.

3 Q And how was the WPATH guidance then used, if at all, by  
4 the DTARC?

5 A So it's absolutely used. It is the primary reference to a  
6 lot of folks that are involved in this treatment, so it has to  
7 be considered.

8 Q And in your view, is the way that it was used consistent  
9 with WPATH?

10 A Yes, ma'am, it was.

11 Your Honor, the WPATH, at several points in their  
12 standards of care, state that this is -- that this is -- these  
13 -- the -- first of all, they call them "standards of care," but  
14 they really identify them as guidelines. They specifically say  
15 that they are -- that they are flexible, that they need to be  
16 adaptable to the particular situation.

17 So in their defense, they do say that individuals  
18 providing this care should take those as guidelines and adapt  
19 them accordingly to their situation and their particular  
20 patient.

21 Q Dr. Campbell, having been through this entire series of  
22 events and part of this process, what is your view on whether  
23 Ms. Zayre-Brown received the individualized consideration that  
24 she was entitled to under the EMTO policy?

25 A I have no doubt that she did.

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1 MS. BRENNAN: Thank you.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Cross-examination.

4 MS. MAFFETORE: Just one moment, please. It's a lot  
5 of paper.

6 **CROSS-EXAMINATION BY MS. MAFFETORE:**

7 Q Good afternoon, Dr. Campbell.

8 A Good afternoon. Good to see you again.

9 Q I was going to say, we've met before at your deposition,  
10 correct?

11 A Yes, ma'am.

12 Q You are DAC's chief medical officer, correct?

13 A Yes, ma'am.

14 Q And another way to say that is that you're DAC's medical  
15 authority; is that correct?

16 A That's correct.

17 Q Okay. And you have no training -- you had no training in  
18 the evaluation of gender-affirming surgery prior to 2022,  
19 correct?

20 A No, ma'am. That's not correct.

21 Q Do you recall testifying at a deposition in this case?

22 A I do. I remember at my deposition I said that I had had  
23 training both in my residency -- now, at the time it was a  
24 different term. It was transgenderism, and it was later  
25 transitioned to transgender identity disorder, but it's the

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1 same condition. So as a family physician, we are trained in  
2 those and what would be that today.

3 Q So my question was no training in the evaluation of  
4 gender-affirming surgery.

5 A I am not a surgeon, if that's what you mean. No.

6 Q Have you ever -- prior to 2022, you had never given an  
7 evaluation for a patient for gender-affirming surgery; is that  
8 correct?

9 A That's correct.

10 Q Okay. Thank you. And in your role as chief medical  
11 officer, we've been discussing a position statement that you  
12 developed regarding gender-reassignment surgery, as it's  
13 phrased in that position paper. Is that correct?

14 A That's correct.

15 Q And I'm going to show you that exhibit, but I'm going to  
16 show you one with my sticker on it so I don't have to do the  
17 binder situation that I just did again, if that is all right  
18 with you.

19 A Yes, ma'am.

20 Q And so this is what --

21 MS. MAFFETORE: Can you make the screen come back for  
22 me? Thank you.

23 Q This is what we've been previously discussing as  
24 Defendants' Exhibit 11, correct?

25 A Yes, ma'am.



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1 Q And if I zoom that out to here, can you see that all right  
2 on the screen?

3 A I can.

4 Q Okay. Thank you.

5 And now 3045 of this document, in that middle paragraph,  
6 you noted that "After extensive and analysis of hundreds of  
7 studies and other publications, it has been determined that  
8 gender-reassignment surgery as a treatment for gender dysphoria  
9 is not medically necessarily." That's what you wrote there,  
10 correct?

11 A Yes, ma'am.

12 Q Okay. And then, if we look at page 3414 of this document,  
13 which is right about at the end, you've concluded there in the  
14 final paragraph on this page, "Accordingly, to support these  
15 procedures given all these concerns would be in conflict with  
16 the most critical imperative in medicine, primum non nocere,  
17 first do no harm." Did I read that correctly?

18 A You did.

19 Q Okay. And then the last sentence of this same paragraph  
20 states, "The evidence regarding GCS does not provide sufficient  
21 confidence that the procedure should be undertaken without  
22 concern for having violated that oath." Correct?

23 A That's correct.

24 Q Okay. And so you're stating there that the evidence  
25 regarding gender-affirming surgery is not sufficient for you to

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1 allow it without violating your oath. That's what that states?

2 A That is what that states, but --

3 Q Okay. Thank you.

4 A Sorry. I would add that, again, it goes back to what I  
5 said. There is a risk-benefit analysis that we are obligated  
6 to provide for every patient.

7 Q Okay. And so you were discussing a prior draft of that  
8 same position statement, correct, with my opposing counsel?

9 A Correct.

10 Q Okay. And I'm going to again show you a different version  
11 just for ease of not using the binder.

12 And so this was previously shown to you as part of DX9.

13 Do you recall looking at DX9 just a moment ago?

14 A Yes, ma'am.

15 Q Do you recall that it was attached to an e-mail dated  
16 February the 17th, 2022?

17 A I do.

18 Q And so this -- you testified it was an early iteration of  
19 that same position-statement document that we were just looking  
20 at just a moment ago?

21 A That's correct.

22 Q Okay. And the first paragraph under "Summary Statement"  
23 states, "Primum non nocere, first do no harm, is the  
24 underpinning of the oath all physicians take. The evidence  
25 regarding GCS does not provide sufficient confidence that the

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1 procedure should be undertaken without concerning for  
2 violating" -- "having violated that oath." Correct?

3 A That's correct, with the caveat I previously stated.

4 Q Okay. And that's the same position that was reflected in  
5 the ultimate case summary, correct?

6 A It is.

7 Q Okay. And so it was your idea to try to introduce this  
8 document as a position statement for the DTARC as a whole,  
9 correct?

10 A That's correct.

11 Q Okay. And you testified previously that this document  
12 reflected your concerns and considerations regarding  
13 gender-affirming surgery as of February 17th, 2022, correct?

14 A Yes, ma'am.

15 Q Okay. And you testified previously that your proposal was  
16 that there'd be a standardized approach to evaluating requests  
17 for gender-affirming surgery, correct?

18 A That's correct.

19 Q Okay. And you were the DTARC co-chair on February 17th,  
20 2022; is that correct?

21 A Yes, ma'am.

22 Q Okay. And you considered Mrs. Zayre-Brown's request for a  
23 vulvoplasty on that same day, correct, February 17th, 2022?

24 A We did.

25 Q Okay. And at that time you determined that it was not

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 medically necessary, correct?

2 A That's correct.

3 Q And you've never met Mrs. Zayre-Brown, correct?

4 A No, ma'am.

5 Q And you've never spoken with her?

6 A No, ma'am.

7 Q Okay. And you just reviewed her medical records while  
8 considering her request; is that correct?

9 A That's correct.

10 Q All right. And you testified previously that you reviewed  
11 Dr. Carracio's recommendation that gender-affirming surgery was  
12 medically necessary for Mrs. Zayre-Brown, correct?

13 A Yes, I did review that note.

14 Q You did not reach out to Dr. Carracio regarding that note,  
15 correct?

16 A No, ma'am.

17 Q You did not seek any elaboration from Dr. Carracio about  
18 when he met -- when he stated that he believed it to be  
19 medically necessary for Mrs. Zayre-Brown?

20 A No, ma'am.

21 Q And you reviewed Jennifer Dula's recommendation that  
22 gender-affirming surgery was the appropriate --

23 (Reporter seeks clarification.)

24 MS. MAFFETORE: I'm sorry.

25 THE COURT: You are a fast talker.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 (Laughter.)

2 MS. MAFFETORE: I am a fast talker, your Honor. I  
3 apologize.

4 THE COURT: And you could emphasize things better in  
5 terms of going through things and -- not for today. It doesn't  
6 matter to me. But for future reference, you -- sometimes you  
7 speed over important --

8 MS. MAFFETORE: Yes, your Honor. Thank you so much.

9 Q You reviewed Jennifer Dula's recommendation that  
10 gender-affirming surgery was the appropriate next step for  
11 Mrs. Zayre-Brown, correct?

12 A Yes, ma'am, I did. I think that her note stated something  
13 to the effect of it seems that that -- I have to look at her  
14 note, but it was -- it was not a definitive. It was that  
15 the -- it appears the next appropriate step may be gender --  
16 and she actually termed it trans-feminine bottom surgery, is  
17 what she put in her note.

18 Q And you didn't seek any elaboration from Jennifer Dula,  
19 correct?

20 A No, ma'am.

21 Q And you testified that you reviewed Dr. Figler's  
22 recommendation following his surgical consult with  
23 Mrs. Zayre-Brown that gender-affirming surgery was the  
24 appropriate next step for Mrs. Zayre-Brown?

25 A Yes, ma'am, I did.

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 Q And you didn't seek any elaboration from Dr. Figler,  
2 did you?

3 A No, ma'am.

4 Q You didn't consult any of Mrs. Zayre-Brown's clinical  
5 providers regarding the decision to deny her request for  
6 gender-affirming surgery, correct?

7 A No, ma'am.

8 Q So I'd now like to look at, once again, what has already  
9 been introduced as Defendants' Exhibit 6, which is also  
10 Plaintiff's Exhibit 6, the case summary.

11 And so this case summary was developed both before and  
12 after February 17th, 2022, correct?

13 A Yes, ma'am.

14 Q Okay. And you are the sole author of the medical analysis  
15 contained in this document, correct?

16 A Yes, ma'am, that's correct.

17 Q And this medical analysis contains the medical-necessity  
18 determination?

19 A It does.

20 Q Okay. And you concluded in the medical analysis that,  
21 based on this review, it is the determination of the medical  
22 authority that gender-reassignment surgery, as requested by  
23 this offender, is not medically necessary; is that correct?

24 A Yes, ma'am, that's correct.

25 Q In your medical analysis, you followed your own view of

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 the criteria for medical necessity, correct?

2 A Yes and no. So there is a generally accepted view of  
3 that, which is what we follow in all cases. But I -- again, I  
4 added some clarifications to what I considered to be medical  
5 necessity.

6 Q Okay. In your medical analysis, you note that you  
7 considered WPATH to be unreliable based on your concerns about  
8 objectivity and conflicts of interest; is that correct?

9 A Yes, ma'am, that's correct.

10 Q And you utilized the standardized approach that you had  
11 proposed in your position statement in considering  
12 Mrs. Zayre-Brown's request for gender-affirming surgery,  
13 didn't you?

14 A Yes, ma'am.

15 Q In fact, the medical analysis represents a summary of your  
16 position statement, correct?

17 A Portions of it, yes, ma'am.

18 Q Okay. In fact, there are several completely identical  
19 passages, correct?

20 A That's correct.

21 Q Okay. The decision not to adopt the policy statement took  
22 place after your decision was made with respect to  
23 Mrs. Zayre-Brown, correct?

24 A That's correct.

25 Q On February 17th, 2022, you had no reason to believe that

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 surgery would lead to increased suicidality for

2 Mrs. Zayre-Brown, correct?

3 A Not specifically, no, ma'am.

4 Q Okay. And you had no reason to believe that

5 Mrs. Zayre-Brown would experience regret following

6 gender-affirming surgery?

7 A No, ma'am.

8 Q You had no reason to believe that Mrs. Zayre-Brown would

9 be at risk for a de-transition, correct?

10 A No, ma'am.

11 Q You testified previously that you did not recall

12 discussing any surgical risks or benefits specific to

13 Mrs. Zayre-Brown at the February 17th, 2022, DTARC meeting,

14 correct?

15 A That's correct.

16 Q Looking at your medical analysis, it does not contain

17 any discussion of Mrs. Zayre-Brown's specific medical

18 circumstances, correct?

19 A That's correct. Not in the -- not in the medical summary,

20 but there is a some of that included at the -- in the

21 biographic information prior to that in that document.

22 Q Okay. And when you refer to the demographic information

23 prior to that document, are you referring to this timeline on

24 the first page?

25 A Yes, ma'am. And there's medical information contained in



## EXAMINATION OF LEWIS JONATHAN PEIPER

1 that.

2 Q Okay. So your position is that the timeline represents  
3 the specific information as to Mrs. Brown in the medical  
4 analysis?

5 A It is a portion of it yes, ma'am.

6 MS. MAFFETORE: Okay. I have no further questions for  
7 this witness at this time.

8 THE COURT: Any redirect?

9 MS. BRENNAN: Very briefly, your Honor.

10 **REDIRECT EXAMINATION BY MS. BRENNAN:**

11 Q Dr. Campbell, could you please turn to Exhibit 7.

12 A Yes, ma'am.

13 Q And this is the final note that was entered into  
14 Ms. Zayre-Brown's chart regarding the determination by the  
15 DTARC?

16 A Yes, ma'am.

17 Q And does this set forth the bases for the denial?

18 A It does. This is the actual document that is produced  
19 that is in the medical record for the patient.

20 Q Does this discuss the individualized review of  
21 Ms. Zayre-Brown's mental health and behavioral health record?

22 A Yes, ma'am, it does.

23 Q Okay. Does it also make a reference to the literature?

24 A Yes, it does.

25 Q In weighing those two things, which was the primary factor

## EXAMINATION OF LEWIS JONATHAN PEIPER

1 in this determination?

2 A It's always the individualized determination.

3 Q Okay. You were also asked some questions about clinical  
4 providers and whether you actually spoke to them. Did you  
5 believe it was necessary to do so?

6 A No, ma'am. Unless I have some reason to believe that  
7 their conclusions are not appropriate, then there's no reason  
8 for me to question them. They -- their notes were very clear  
9 by my understanding.

10 Q And if you look at Exhibit 8, which is the really thick  
11 document in the binder, for one of those providers, Ms. Dula,  
12 for example, would that contain multiple examples of her  
13 contemporaneous notes documenting her actual encounters with  
14 Ms. Zayre-Brown?

15 A It contains multiple notes from her, yes, ma'am.

16 Q And would it contain notes from all the treating  
17 providers?

18 A It would.

19 Q And was that all the information that you had available  
20 to you and that you considered in doing your review of  
21 Ms. Zayre-Brown's case?

22 A Yes, ma'am. It has to be a comprehensive review. You  
23 can't base a decision off any single note or entry.

24 MS. BRENNAN: Nothing further, your Honor.

25 THE COURT: All right. Thank you.

## EXAMINATION OF BRIAN SHEITMAN

1 Any cross, further cross?

2 MS. MAFFETORE: No, your Honor.

3 THE COURT: Okay. Thank you, Doctor.

4 THE WITNESS: Thank you, your Honor.

5 (Witness excused.)

6 MR. RODRIGUEZ: Your Honor, we have one additional  
7 witness, Dr. Brian Sheitman.

8 THE COURT: Why don't we take about a 15-minute break.

9 MR. RODRIGUEZ: Thank you, your Honor.

10 THE COURT: And we can hear that witness, and I think  
11 then the plaintiffs have one witness. Is that right?

12 MS. MAFFETORE: (Ms. Maffetore nodded her head up and  
13 down.)

14 THE COURT: Okay.

15 MS. MAFFETORE: That is correct, your Honor. We have  
16 one witness.

17 (A recess was taken.)

18 THE COURT: All right. Call your next witness.

19 MR. RODRIGUEZ: Thank you, your Honor. We'll call --  
20 the defendants call Dr. Brian Sheitman to the stand.

21 (Witness sworn.)

22 **BRIAN SHEITMAN, DEFENDANTS' WITNESS, DIRECT EXAMINATION**

23 **BY MR. RODRIGUEZ:**

24 Q Good afternoon, Dr. Sheitman. Can you please introduce  
25 yourself to the Court.

## EXAMINATION OF BRIAN SHEITMAN

1 A Sure. My name is Brian Sheitman. I'm the chief  
2 psychiatrist for the North Carolina Department of Adult  
3 Correction. I've held that job since December 2018. I came to  
4 North Carolina in 1996 and took a job with the University of  
5 North Carolina, Chapel Hill, the psychiatry faculty, and I was  
6 at that job till I left to take this job.

7 Q Thank you. Can you turn there -- you should have a  
8 notebook up on your desk.

9 A Yes.

10 Q Can you turn to Exhibit 3, DX3. And is that an accurate  
11 copy of your CV up until the time that it was created?

12 A It looks like it is, yes.

13 Q Can you describe to the Court what you did as the chief of  
14 psychiatry in preparation for the February 17, 2022, DTARC  
15 meeting wherein the committee discussed Mrs. Zayre-Brown's  
16 request?

17 A I reviewed her medical record, which included -- so the  
18 behavioral-health section, the medical section, and there's  
19 this other section, an administrative section called OPUS which  
20 has some clinical and other information in it. So I tried to  
21 go through those records.

22 Q Okay. And is that a review that you do before the  
23 meeting?

24 A Yes.

25 Q And how comprehensive is that review?

## EXAMINATION OF BRIAN SHEITMAN

1 A I try to go through all the behavioral-health notes, the  
2 medical notes. If I see something that's described that I  
3 would see as completely irrelevant, I would probably not read  
4 it. And I scan through the OPUS administrative records,  
5 looking at certain sections.

6 Q Okay. Can you turn to Exhibit 8 there in the binder. So  
7 it's the document that starts after the 8 tab.

8 A I've got it.

9 Q Are you familiar with these records here?

10 A These look like the type of records that I reviewed.

11 Q Okay. And if you take a moment to flip through them  
12 briefly, what types of records are you seeing here?

13 A So this one is a clinical encounter, which is nursing  
14 notes. That would be in the medical section. And there's a  
15 mental-health assessment, then there's another  
16 clinical-encounter note, mental-health progress note.

17 Q And are these an accurate representation of the records  
18 you would have had access to to review before the DTARC  
19 meeting?

20 A I think so. I don't remember the specifics, but I would  
21 assume yes.

22 Q And in reviewing the records, what is your purpose?

23 A My -- to inform the committee about the person's overall  
24 psychiatric stability. How are they doing? How would you  
25 describe this person's level of functioning at that time?

## EXAMINATION OF BRIAN SHEITMAN

1 Q And how do you come to that assessment by reviewing  
2 records?

3 A Well, I try to sort out -- I try to look at symptoms, what  
4 the person reports, signs, so mostly more objective measures.  
5 I'll look at a medication administration record. Is this  
6 person taking their medicine? Are they not taking their  
7 medicine? How -- are they going to appointments? Just sort of  
8 a general overview of what they're saying, what they're doing,  
9 and as much other collateral information as I can get.

10 Q Why is that kind of assessment important, from your  
11 perspective, on the DTARC?

12 A I think you're trying to get a whole, more accurate  
13 picture of someone. Sometimes people may say one thing, and  
14 the records may look the other way. Sometimes they're exactly  
15 the same. Sometimes it could be reversed. So I just want to  
16 try to get as much as information as I can to make as informed  
17 a decision as I can by looking at records.

18 Q Did you conduct a record review in the case of  
19 Mrs. Zayre-Brown's request?

20 A Yes.

21 Q Did you arrive at an assessment of Mrs. Zayre-Brown's  
22 overall mental health after that review?

23 A I did.

24 Q And what was that assessment?

25 A I thought she was doing relatively well. Looking at her

## EXAMINATION OF BRIAN SHEITMAN

1 record, I thought she looked like a -- sort of a -- mostly an  
2 energetic, forward-thinking person who is determined. She was  
3 sort of unhappy with her current state, and she was going to do  
4 everything that she could and figure out ways to sort of move  
5 forward, to get what she wanted. She didn't strike me as sort  
6 of depressed.

7       The issue that I focus on is dysphoria. Is the person  
8 unhappy? Is the person depressed? And not to sort of joke  
9 about it, but it's gender dysphoria. Dysphoria is a broad  
10 concept to me. So I wanted to look at the different pieces  
11 that I would include in someone who's dysphoric, not just  
12 unhappy.

13 Q     Okay. And were there instances in her record based on  
14 your review where she appeared to, perhaps, not be doing as  
15 well as other times?

16 A     There were. There were a number of times wherein her  
17 symptoms -- there was a blip in her symptoms. What I  
18 interpreted from that, there was always something external that  
19 was going on that she was upset about, and that -- then she  
20 has -- whether it was going to the emergency department or the  
21 hospital.

22       So each time I looked at that, it was something what -- I  
23 don't remember the details off the top of my head, but I know  
24 she was unhappy with her prison camp, and she wanted to get out  
25 of the camp, and that was raising her overall symptoms. And

## EXAMINATION OF BRIAN SHEITMAN

1 then, when I looked later on, she did get out, and then her  
2 symptom severity went way down.

3 So that would be more the way I look at it, is it's more  
4 of a reaction to external events other than an internal  
5 process. That's how I saw it.

6 Q Did you have -- arrive at an assessment of whether  
7 Mrs. Zayre-Brown's symptoms were well-controlled?

8 A I would say I didn't see severe symptoms. You know,  
9 again, I always struggle, too, because everybody in prison is  
10 unhappy and depressed. And prison is horrible. So whenever I  
11 go through a chart, I try to factor in sort of their overall  
12 environment, which is -- you know, very rarely does somebody  
13 say they're doing really well when they're in prison.

14 So I try to sort that out from co-morbidities to -- being  
15 in prison to having this other problem. And I'm not sure I'm a  
16 hundred percent right. I do the best I can.

17 Q Did you provide your overall assessment on the overall  
18 state of Mrs. Zayre-Brown's mental health to the DTARC?

19 A I did.

20 Q And so is it fair to say that you did not defer to  
21 Dr. Campbell or anyone else when arriving at that conclusion?

22 A No, absolutely not.

23 Q I'm going to ask again. I don't know that we heard your  
24 -- did you defer to any other individuals --

25 A No.



## EXAMINATION OF BRIAN SHEITMAN

1 Q -- in arriving at your conclusion on her overall mental  
2 state?

3 A No. I did it basically on my own.

4 Q And is that something you do with respect to other DTARC  
5 cases that come up?

6 A I -- you know, I don't remember the details, but I have a  
7 process I go through all the time. The process is always the  
8 same. I go through the records. I find some time to go  
9 through all the records. I sit by myself. I go through them.  
10 If something comes up that I'm not sure about, I could reach  
11 out. Most of the time, I don't. I just go by what's in the  
12 record.

13 Q In that process, in reviewing medical records, if you came  
14 upon a patient's chart that, based on your review, you  
15 concluded that the patient did have severe symptoms associated  
16 with gender dysphoria that were not responsive to existing  
17 interventions and were not related to comorbid conditions,  
18 would you have determined in that instance that surgery would  
19 be medically necessary?

20 A Yes.

21 Q And was -- that situation that I just described, was that  
22 Mrs. Zayre-Brown's situation?

23 A I didn't think it was. I didn't think her symptoms were  
24 that severe. That was my opinion.

25 Q And if you came across a situation where a patient's --

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1 review of a patient's chart indicated that they had severe  
2 symptoms that were not well-controlled by existing  
3 interventions, that were related to their gender dysphoria and  
4 not some other comorbid condition, would your assessment be  
5 that surgery might be medically necessary for them, regardless  
6 of the state of the medical literature?

7 A Yes. I might have some additional questions. Having  
8 spent much time in a prison, a lot of things go on in prison  
9 that people aren't really aware of. So I would -- may have  
10 other questions to be sure that I'm right.

11 Q And if you had those other questions addressed and still  
12 believed that gender-affirming surgery would be medically  
13 necessary for the patient, would you recommend it regardless of  
14 the state of the medical literature?

15 A Yes.

16 Q Now, with respect to the medical literature, did you  
17 conduct your own review of available literature on the topic of  
18 gender-affirming surgery?

19 A Yes.

20 Q And did you arrive at a conclusion as to the general state  
21 of that literature?

22 A The literature was much more robust than I first thought.  
23 I'm really not -- honestly, wasn't an expert in this in any  
24 way, shape, or form. So I went through the literature. It was  
25 overwhelmingly a lot of literature in it. So I looked through

## EXAMINATION OF BRIAN SHEITMAN

1 the reviews.

2 In psychiatry, I had been part of these reviews. I think  
3 it was the AHRQ reviews where they set up standards. They pull  
4 out the studies that meet the standards, and you go through,  
5 and you rate all -- you have an expert panel rate the studies.

6 So I looked at -- that was the one I really spent the most  
7 time looking at because I thought it would save me time, it  
8 would be more efficient, and I had respect for what they did.  
9 So yes.

10 Q And what was the -- you said that it was H -- AHRQ?

11 A I think it's A -- American Hospital Research and Quality,  
12 I think is the one.

13 Q And what was the overall determination or takeaway from  
14 that review?

15 A It was inconclusive, really. There was no clear evidence  
16 that this is an evidence-based procedure.

17 Q So you didn't defer to Dr. Campbell --

18 A No.

19 Q -- with respect to the medical literature you reviewed?

20 A No.

21 Q Now, with respect to Dr. Camera's position statement, at  
22 the time that the DTARC met to consider Mrs. Zayre-Brown's  
23 request -- so February 17, 2022 -- had you seen -- at that  
24 time, had you seen a copy or version of Dr. Campbell's position  
25 statement?

## EXAMINATION OF BRIAN SHEITMAN

1 A No.

2 Q Now, the position statement was subsequently circulated --

3 A Yes.

4 Q -- to you and other members of the DTARC?

5 A Yes.

6 Q What happened to that position statement after it was  
7 circulated?

8 A Someone told me -- I don't really remember who it was --  
9 that it was just shelved because the administration does not  
10 want to have any blunt -- even perception of some blanket  
11 approach to this, and it should be taken case by case. So that  
12 was the end of it.

13 Q And has the DTARC -- had the DTARC utilized a case-by-case  
14 review process?

15 A Yes.

16 Q Does it continue to do so?

17 A Yes.

18 Q Did Dr. Campbell's position statement in any way impact  
19 how or whether the DTARC utilized an individualized review  
20 process?

21 A I mean, I can't speak for everybody else. I can  
22 truthfully speak for myself, but no.

23 MR. RODRIGUEZ: No further questions.

24 THE COURT: Cross.

25 ///

## EXAMINATION OF BRIAN SHEITMAN

1                   **CROSS-EXAMINATION BY MS. LI NOWLIN-SOHL:**

2       Q     Hi, Dr. Sheitman. My name is Li Nowlin-Sohl. I'm an  
3 attorney for plaintiff.

4            You were a member of DTARC on February 17th, 2022,  
5 correct?

6       A     The correct.

7       Q     Okay. And DTARC made a recommendation against  
8 Mrs. Zayre-Brown receiving gender-affirming vulvoplasty at that  
9 meeting?

10      A     I believe so.

11      Q     And you participated in that decision-making?

12      A     Yes.

13      Q     You are a psychiatrist?

14      A     Yes.

15      Q     Other than participating in a training for DPS employees  
16 provided by an expert from NCU Chapel Hill, you have no  
17 training in the treatment of gender dysphoria, correct?

18      A     No specific training. There was a recent six -- not so  
19 recent now, but six articles came out in one of the  
20 correctional journals, and I read through them. I didn't think  
21 any of them were that great. But I don't have any more formal  
22 training, no.

23      Q     Okay. So other than that DPS training and the articles  
24 that you read, you have no other training in the treatment of  
25 gender --

## EXAMINATION OF BRIAN SHEITMAN

1 A No formal training, correct.

2 Q Okay. Thank you.

3 And when you've worked with patients who have gender  
4 dysphoria, your focus has been on their psychiatric  
5 co-morbidities, not on treating their gender dysphoria?

6 A That's correct.

7 Q You had never met nor spoken with Mrs. Zayre-Brown?

8 A That's correct.

9 Q And you never personally evaluated Mrs. Zayre-Brown for  
10 gender-affirming surgery?

11 A That is correct.

12 Q So you relied entirely on the reports for other providers  
13 for your consideration of Mrs. Zayre-Brown's request for  
14 surgery, correct?

15 A Other providers and other information, yes.

16 Q As part of your consideration, you reviewed Jennifer  
17 Dula's transgender accommodation surgery -- or summary --

18 A Yes.

19 Q -- that was dated October 20th, 2021?

20 A Yes.

21 Q Okay. And just for the clarity of the record, I'm going  
22 to ask you that you let me finish the question before answering  
23 just for the sake of our court reporter.

24 A Apologize.

25 Q And so I'm going to just show you what -- well, I'll ask

## EXAMINATION OF BRIAN SHEITMAN

1 the question first.

2 And Ms. Dula stated in that summary that "Ms. Brown  
3 continues to report clinically significant anxiety, depression,  
4 and distress associated with her gender dysphoria that has been  
5 documented consistently throughout her mental-health  
6 treatment." Do you recall that in Ms. Dula's summary?

7 A I don't, but I believe it if you're saying it.

8 Q So I'm going to show you what's been marked as Defendants'  
9 Exhibit 8, and I'm showing you the portion that was at your  
10 deposition, just for ease of the binder, on the Elmo.

11 Okay. Let's see. And so in the middle there's a  
12 highlighted portion that says "despite these interventions."  
13 Do you see that?

14 A Yes.

15 Q Okay. And so you read that highlighted portion and were  
16 aware of that at the February 17th DTARC meeting?

17 A Again, I don't truthfully remember exactly, but I did read  
18 them.

19 Q Okay. And Ms. Dula also continues that -- in the  
20 highlighted paragraph below. "Based on the review of her  
21 records and the current assessment, it appears the next  
22 appropriate step for Ms. Brown is to undergo trans-feminine  
23 bottom surgery. The surgery will help her make significant  
24 progress in further treatment of her gender dysphoria." Did I  
25 read that correctly?

## EXAMINATION OF BRIAN SHEITMAN

1 A I think so.

2 Q Okay. And you were aware from Mrs. Zayre-Brown's medical  
3 records that she had previously engaged in self-harm toward her  
4 phallus?

5 A Could you be more specific? Like I don't mean to be  
6 voyeuristic or anything, but I'm not --

7 Q So were you aware that Mrs. Zayre-Brown had previously  
8 engaged in self-harm?

9 A It was one instant, I think, with -- where she wrapped  
10 something around her penis. Is that the one?

11 Q Yes.

12 A Okay.

13 Q And you were aware of that at the -- okay.

14 And you considered that an attempt at self-harm?

15 A I don't know.

16 Q Okay. You were aware from her medical records that she  
17 had four self-injury risk assessments since 2017?

18 A I know she's had some episodes, but -- I don't know the  
19 risk assessments, but I -- probably. But I know there were  
20 episodes she went to the emergency department. She was  
21 admitted to the inpatient unit. I am aware of that.

22 Q Okay. So at the top here, where it's highlighted -- this  
23 is still Ms. Dula's transgender accomodation summary. It says,  
24 "There has been some crisis intervention required, including  
25 four SIRAs and one inpatient placement since 2017."



## EXAMINATION OF BRIAN SHEITMAN

1       What does SIRA stand for?

2   A     Self-injury risk assessment.

3   Q     Okay. And so from this record, you were aware at the time  
4   that Ms. Zayre-Brown had had four?

5   A     Yes.

6   Q     And as part of your consideration of her request for  
7   surgery, you also reviewed Dr. Figler's medical notes from his  
8   July 12th, 2021, visit with Mrs. Zayre-Brown?

9   A     I assume I did. I don't know off the top of my head.

10   Q     Okay. So this is also previously marked as Defendants'  
11   Exhibit 8. It is on page 313 of that exhibit.

12       Okay. And is this the notes from Dr. Figler and --  
13   actually, no. This has a --

14       (Discussion off the record.)

15   Q     And does this look like a note from a Dr. David Figler,  
16   Bradley David Figler?

17   A     Yes.

18   Q     Okay. And does this look like an evaluation for  
19   gender-affirming surgery?

20   A     Yes.

21   Q     Okay. And on the next page, where it says "plan," can you  
22   read that first bullet point for me?

23   A     "Proceed with vulvoplasty per WPATH criteria pending."

24   Q     And you were aware of these records at the time of the  
25   DTARC meeting?

## EXAMINATION OF BRIAN SHEITMAN

1 A Yes.

2 Q And as part of your consideration for  
3 Mrs. Zayre-Brown's request for surgery, you also reviewed  
4 Dr. Bowman's December 6th, 2021, mental health progress note?

5 A It would -- yes. If it was in that list, sure.

6 Q Okay. At the very bottom of this note, it says, "Progress  
7 towards goals." Do you see that?

8 A Yes.

9 Q Okay. And flipping to the next page -- and this is  
10 page 357 of Defendants' Exhibit 8. Sorry. Now I'm on 358.

11 It says, "Today Offender Brown reported a level of 11 on a  
12 gender-dysphoria scale from 0 to 10." Is that correct?

13 A Yes.

14 Q Okay. And what does a Level 0 mean on that scale?

15 A No dysphoria.

16 Q And what does a Level 10 mean on that scale?

17 A Extreme dysphoria.

18 Q And so you were aware that, on December 6th,  
19 Mrs. Zayre-Brown had rated her gender-dysphoria level as an 11?

20 A Yes.

21 Q Okay. And you were also, therefore, aware the listed  
22 treatment goal for Mrs. Zayre-Brown was to get her to a Level 5  
23 or below?

24 A Yes. I'm reading it.

25 Q And as part of your consideration, you also looked at

## EXAMINATION OF BRIAN SHEITMAN

1 Dr. Bowman's December 20th mental-health progress note,  
2 correct, as part of her records?

3 A It should be, yes.

4 Q Okay. And so this was, what, approximately two months  
5 before the FTARC meeting?

6 A Yes.

7 Q Okay. And again, at the bottom it says, "Progress towards  
8 goals." I'm going to flip to the next page, which would be  
9 362, of Defendants' Exhibit 8.

10 And can you tell me what Mrs. Zayre-Brown -- what level  
11 she rated her gender dysphoria at on this date?

12 A A 10.

13 Q Okay. And I'm now going to show you Ms. Dula's notes from  
14 January 5th, 2022, that were also part of the record. If they  
15 were part of her medical record, you testified earlier that you  
16 would have reviewed this, as well, correct?

17 A Yes.

18 Q Okay. And I'm going to point you to the highlighted  
19 portion, where it says Mrs. Zayre-Brown -- she describes her  
20 current level of dysphoria as "off the charts." Did I read  
21 that correctly?

22 A Yes.

23 Q Okay. And it also says that Mrs. Zayre-Brown asks to be  
24 seen every two weeks due to her gender-dysphoria level being  
25 off the charts, correct?

## EXAMINATION OF BRIAN SHEITMAN

1 A Yes. And if I could say some -- I would read the full  
2 note. So if you read like "mental status behavior  
3 observation," "the defendant was appropriately dressed in the  
4 prison attire, demonstrated adequate hygiene and grooming. The  
5 defendant was fully oriented. Her memory, attention, and  
6 concentrate were unimpaired. She spoke in a clear, manageable  
7 speech of a normal rate, tone, and volume. Affect was  
8 mood-congruent, euthymic" -- meaning that you don't see any of  
9 this -- "no overt evidence of psychosis or mania. Her thoughts  
10 are logical and goal-oriented. She denied any current  
11 destructive, homicidal, or suicidal ideation. Offender does  
12 not report any concerns with sleep, appetite, or energy level.  
13 Insight and judgement" --

14 Q Dr. Sheitman, my question was just about that specific  
15 portion, so --

16 A I was just -- I'm sorry.

17 THE COURT: I think he needs to -- I think he can  
18 answer it that way. In other words, what he's saying is that  
19 that is at odds with the earlier -- with the statement below --

20 MS. NOWLIN-SOHL: Okay.

21 THE COURT: -- as to being off the charts.

22 Q At the very bottom, where it's highlighted, did Ms. Dula  
23 agree to increase her visits with Mrs. Zayre-Brown due to her  
24 high level of dysphoria?

25 A Yes.

## EXAMINATION OF BRIAN SHEITMAN

1 Q Okay. Of the medical providers' records that you  
2 reviewed, none of them recommended against Mrs. Zayre-Brown  
3 receiving surgery, correct?

4 A I think so. I'm not a hundred percent sure on that.

5 Q You're not sure? Do you recall any provider recommending  
6 against surgery in those medical records?

7 A Again, I know Dr. Hahn worked with her and Dr. Bowman. I  
8 don't know if they said exactly that they recommended surgery.  
9 They could have, but I don't remember. That's -- I'm just  
10 being honest.

11 Q But none of them recommended against surgery, correct?

12 A I think that's probably true.

13 Q Okay. And none of the providers said that surgery was  
14 unnecessary for Mrs. Zayre-Brown?

15 A Not that I can remember, no.

16 Q Okay. And I'm going to show you one more record that was  
17 in Mrs. Zayre-Brown's records. It's Defendants' Exhibit 8,  
18 page 370. Can you read the date on this record?

19 A 2/7/22.

20 Q Okay. And so this is 10 days before the DTARC meeting,  
21 correct?

22 A Yes.

23 Q All right. And can you read the first sentence under  
24 "progress towards goals?"

25 A "Offender is reporting increased dysphoria and associated

## EXAMINATION OF BRIAN SHEITMAN

1 anxiety."

2 Q Okay. Thank you.

3 And of the medical records that you reviewed, none of them  
4 described Mrs. Zayre-Brown as having achieved her therapy goal  
5 of a gender-dysphoria level of under 5 or below, correct?

6 THE WITNESS: Am I allowed to answer more fully?

7 THE COURT: Yes, you can.

8 A Yes, but, again, that's a self-report.

9 Q Okay. But none of them said that she'd achieved that  
10 goal?

11 A I honestly don't remember, but I'll say yes just because  
12 I'll take your word for it.

13 Q And none of the medical records you reviewed said that she  
14 no longer expressed distress at having a phallus, correct?

15 A Could you ask that again? Sorry.

16 Q So none of the medical records you reviewed said that she  
17 no longer expressed distress at having a phallus or penis,  
18 correct?

19 A I don't remember seeing that.

20 Q Okay. And you have concerns that Mrs. Zayre-Brown might  
21 engage in self-harm if she did not receive her gender-affirming  
22 surgery?

23 A I mean, my job is to worry about everything, so of course  
24 I'm going to worry about it because it's possible. So I --  
25 it's always on my mind about everybody. I mean, I'm supposed

## EXAMINATION OF BRIAN SHEITMAN

1 to worry about things, and I do.

2 Q Okay. But you had that specific worry for  
3 Mrs. Zayre-Brown?

4 A I didn't have it -- it wasn't a high-level concern for me,  
5 but it's certainly in the differential. When I looked at her  
6 records, she didn't really have a history that I was that  
7 worried about.

8 And I also thought she -- like I said, she was very  
9 goal-directed, she was really future-oriented, she wanted to do  
10 things. She wasn't someone I was really worried about based on  
11 her history. But certainly, yes, I worry about it because you  
12 just don't know, and I can't be a hundred percent certain.

13 Q Okay. So I'm going to show you what's been previously  
14 marked as Defendants' Exhibit 11, which is titled "DTARC  
15 Position Statements, Gender-Reassignment Surgery." I think you  
16 testified earlier that you've seen this document before.  
17 Correct?

18 A Yes.

19 Q Okay. And was this document discussed at the  
20 February 17th DTARC meeting?

21 A No.

22 Q No?

23 A Not to my recollection.

24 Q Okay. And so you received this document via e-mail on --  
25 in March of 2022?

## EXAMINATION OF BRIAN SHEITMAN

1 A That's my understanding, yes.

2 Q Okay. And at a DTARC meeting, the members of DTARC  
3 unanimously supported this position statement, correct?

4 A I don't know about that. I think there was some questions  
5 about that. I don't remember unanimously supporting it.

6 Q Okay. Would your deposition help you maybe recall that?

7 A What did I say?

8 Q So you were deposed in this matter, correct, Dr. Sheitman?

9 A You know, I don't remember, but I was -- on this topic,  
10 yeah, but I don't remember exactly -- whatever I said was the  
11 truth, so what did I say?

12 Q But you do recall being deposed, correct?

13 A Yes, absolutely.

14 Q Okay. And that deposition was under oath?

15 A Yes.

16 Q Just give me one moment.

17 All right. So this is a question that says, "Exhibit 27  
18 is entitled 'Division Transgender Accomodation Review Committee  
19 (DTARC) Position Statement, Gender-Reassignment Surgery.'" Did  
20 I read that correctly?

21 A Looks like you did, yes.

22 Q And that's the document we were just discussing?

23 A Yeah.

24 Q Okay. So I'm going to move down a little bit to line 13.

25 And it says, "Okay, so looking then at Exhibit 26 -- Exhibit 26



## EXAMINATION OF BRIAN SHEITMAN

1 -- sorry. You said you didn't recall the bit here about voting  
2 buttons. Do you recall whether or not DTARC ever voted on the  
3 position statement that was attached to this e-mail?" Answer,  
4 "Yes, I think" -- and there's a little bit of crosstalk, and it  
5 says, "Yes, I think it was supported."

6 Question, "It was supported? Okay. Did that take place  
7 at a DTARC meeting?" Answer, "I believe it did."

8 Question, "Okay. And do you have any recollection as to  
9 when that DTARC meeting was?" Answer, "No. I apologize. I  
10 don't."

11 Question, "It's okay. And do you recall, was it supported  
12 unanimously by everyone?" Answer, "And it may not be a DTARC  
13 meeting, but I'm sure there was some kind of -- it was like a  
14 conference with the players. It may not have been a meeting.  
15 I don't remember, but it was discussed, and I remember  
16 discussing it."

17 A Right.

18 Q Moving down a little bit to line 15. Question, "And was  
19 -- was -- you said it was supported. Was that support  
20 unanimous among the people at the meeting?" Answer, "Yes."

21 Did I read that correctly?

22 A Yeah. So, I mean, it was -- I think -- I'm not sure when  
23 it happened, but yeah.

24 Q Okay. But at some point the DTARC committee unanimously  
25 supported that position statement?

## EXAMINATION OF BRIAN SHEITMAN

1 A Again, I don't know if it was the DTARC committee. So I  
2 don't know who would have been at the other meeting because the  
3 DTARC committee pulls people in -- we have sort of like a  
4 regular remote meeting as to different people like that. I  
5 don't know if it was everybody at the meeting, so I can't say  
6 for sure.

7 Q Okay. And you agreed with the position statement's  
8 conclusion that gender-affirming surgery is not medically  
9 necessary?

10 A I think it was for this case because if -- I remember  
11 asking, if we're going to have this, then why do we even need  
12 to have -- why do we need people -- to send them for a surgery  
13 consults, and why do we need to discuss this at a DTARC meeting  
14 if it's going to be every case?

15 And I remember asking that question because, if you read  
16 it this way -- and I kind of read it a little bit like that,  
17 too -- that, if that's a plausible read of this, then why are  
18 we having this -- why are we going through this?

19 And that's when -- I don't remember -- again, I don't  
20 remember exact details, but then it was just shelved and  
21 said, no, that's not what they want. So that's my recollection  
22 of it.

23 Q Okay. And before it was shelved, though, you agreed with  
24 the position statement's conclusion that gender-reassignment  
25 surgery is not medically necessary?

## EXAMINATION OF BRIAN SHEITMAN

1 A For this person.

2 Q Okay. So I'm going to show you a few more pages on your  
3 deposition.

4 A Because then I went to do the literature review, and it  
5 was equivocal. So my thinking was that, you know, it should be  
6 case by case. But it shouldn't be a routine procedure, and  
7 that's -- a hundred percent, I do think that.

8 Q Okay. So going back to your deposition, Dr. Sheitman,  
9 this is page 141 of your deposition. And looking -- starting  
10 at line 15, we're still talking about Exhibit 27, which is the  
11 same document.

12 It says, Question, "And is it your understanding that this  
13 -- Exhibit 27 -- was something written by Dr. Campbell?"  
14 Answer, "It -- it looks like a lot of stuff that he's written,  
15 and I believe -- and his name is on it, so I would assume that  
16 he did write it."

17 Question, "You're right. His name's there on the first  
18 page. Do you agree with Dr. Campbell's conclusion, stated here  
19 on page 2, that GRS treatment -- GRS as a treatment for gender  
20 dysphoria is not medically necessary?" Answer, "I would say  
21 overall I think the literature would support that."

22 A Like the literature is supporting that overall, it's not  
23 medically necessary. I stand by that.

24 Q Okay. But generally, Exhibit 27 is the position statement  
25 that is not specific to Mrs. Zayre-Brown, correct?

## EXAMINATION OF BRIAN SHEITMAN

1 A You know, I would have to ask Dr. Campbell on that one. I  
2 don't know.

3 Q Okay. This is the position statement that you received  
4 and that we were discussing in the deposition?

5 A Correct.

6 Q And this was -- you did not see this until March of 2022?

7 A To the best of my recollection.

8 Q And that was after DTARC had made the determination?

9 A Yes.

10 Q Okay. And, Dr. Sheitman, your view is that  
11 gender-affirming genital surgery would only be justified in  
12 cases where the gender dysphoria is severe and debilitating?

13 A It would have to have some impact on the person. If the  
14 person said, well, once in a while I feel upset about this, but  
15 most of the time I'm fine, I would say it wouldn't meet the  
16 criteria for medical necessity.

17 Q Okay. But I think earlier you asked -- you were asked  
18 about severe and debilitating. Is that your understanding of  
19 the standard?

20 A No.

21 Q What is your understanding of the standard?

22 A I think it's persistent dysphoria, is what I think.

23 Q Okay. If Mrs. Zayre-Brown had been psychiatrically  
24 unstable at the time of the February 17th DTARC meeting, that  
25 would have disqualified her from surgery, correct?

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1 A Correct.

2 MS. NOWLIN-SOHL: No further questions, your Honor.

3 **REDIRECT EXAMINATION BY MR. RODRIGUEZ:**

4 Q Opposing counsel just referenced the contraindication  
5 about the psychiatric instability precluding surgery. Is it  
6 your understanding that that is a contraindication that's  
7 referenced in an older version of the WPATH standard?

8 A I've seen it. You know, now I'm a little nervous, and I'm  
9 not exactly sure, but I've seen it.

10 Q Okay. And so the reference there to psychiatric  
11 instability precluding surgery -- for gender-affirming surgery,  
12 is that instability with respect to a comorbid psychiatric  
13 condition or is it with respect to the person's gender  
14 dysphoria?

15 A No. There's comorbid psychiatric conditions and there's  
16 gender dysphoria. Sometimes they do overlap, and it's tricky,  
17 but what I'm thinking is it's separate for someone with a  
18 psychotic disorder who's having hallucinations. And you'd say,  
19 well, that person's probably not free to make that decision.  
20 You'd want to treat the hallucinations and get that under  
21 control. If that's okay, then the person has dysphoria, that's  
22 a separate -- so it's separate.

23 Q Okay. So the instability that you just referenced would  
24 be a preclusion for surgery, is that in reference to a comorbid  
25 psychiatric condition?

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1 A Yes.

2 MR. RODRIGUEZ: No further questions, your Honor.

3 MS. NOWLIN-SOHL: No further questions, your Honor.

4 THE COURT: Thank you.

5 You may come down. Thank you.

6 (Witness excused.)

7 MR. DAVIDSON: Your Honor, the plaintiff at this time  
8 would like to call Dr. Randi Ettner, and she'll be testifying  
9 via video.

10 Good afternoon.

11 Do you want to swear her?

12 THE WITNESS: Good afternoon.

13 THE CLERK: Dr. Ettner, I'm going to give you an  
14 affirmation.

15 (Witness affirmed.)

16 **RANDI ETTNER, PLAINTIFF'S WITNESS, DIRECT EXAMINATION**

17 **BY MR. DAVIDSON:**

18 Q Dr. Ettner, what's your professional occupation?

19 A I'm a clinical and forensic psychologist.

20 Q And how long have you been doing that?

21 A Oh at least 30 years.

22 Q Dr. Ettner, do you -- have you ever held any positions at  
23 the World Professional Association For Transgender Health, also  
24 known as WPATH?

25 A Yes. I served 12 years on the board of directors, two

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1 terms as a secretary on the executive committee. I chaired the  
2 Committee For Institutionalized Persons, and I was a -- one of  
3 the development over the curriculum of mental health for their  
4 gender-education initiative.

5 Q Dr. Ettner, what version of the WPATH Standards of Care  
6 was in effect on February 17th, 2022?

7 A That would have been the seventh version of the Standards  
8 of Care.

9 Q And did you play any role in the creation of the seventh  
10 version of the WPATH Standards of Care?

11 A I'm one of the authors of that version.

12 Q And what version of the WPATH Standards of Care is in  
13 effect today?

14 A The eighth version.

15 Q And did you play any role in the creation of that  
16 document?

17 A Yes. I was also an author of that document.

18 Q Dr. Ettner, are you a member of the medical staff of any  
19 hospital?

20 A I'm on staff at Weiss Memorial Hospital in Chicago.

21 Q Can you see what's been marked as Plaintiff's Exhibit 1?

22 A Yes.

23 Q Does that appear to be a true and correct copy of your  
24 current CV?

25 A Yes.

## EXAMINATION OF RANDI ETTNER

1 MR. DAVIDSON: And, your Honor, I believe we've  
2 stipulated that all of the exhibits can be admitted into  
3 evidence, so I'll -- that's --

4 THE COURT: It will be admitted.

5 (Plaintiff's Exhibit No. 1 was received in evidence.)

6 Q Have you ever evaluated, diagnosed, or treated individuals  
7 with gender dysphoria?

8 A Twenty-four hundred.

9 Q In your work, do you ever make determinations about  
10 whether gender-affirming surgery is medically necessary to  
11 treat an individual's gender dysphoria?

12 A Yes, I routinely make those assessments.

13 Q And in what parts of your work do you make those  
14 assessments?

15 A In my own clinical practice, in my forensic work, in the  
16 supervision I do, and in my consultation at the hospitals.

17 Q Have you published any medical texts related to the  
18 treatment of individuals with gender dysphoria?

19 A In 2007, I published "Principles of Transgender Medicine  
20 and Surgery." In 2016, I published the second edition of their  
21 textbook, and I'm currently under contract to produce a third  
22 edition.

23 Q And have you written any book chapters related to the  
24 treatment of individuals with gender dysphoria?

25 A I have. I'll name just two: "Preoperative Evaluation For



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1 the Surgical Management of the Transgender Patient" in a  
2 surgical atlas, and also "Surgical Treatments For the  
3 Transgender Population in Lesbian, Gay, Bisexual, Transgender,  
4 and Intersex Healthcare, a Clinical Guide to Preventative,  
5 Primary, and Specialty Care."

6 Q And have you in the past evaluated gender-dysphoric  
7 individuals who are incarcerated?

8 A Yes, I have, in 20 different states and in over  
9 37 different institutions.

10 Q And have you been qualified by courts as an expert to  
11 testify regarding the medical necessity of gender-affirming  
12 surgery?

13 A Yes.

14 Q Have you been appointed by a federal court as an  
15 independent expert regarding the evaluation of whether an  
16 inmate with gender dysphoria needed surgery?

17 A Yes, I have.

18 Q And did you personally meet with and examine  
19 Mrs. Zayre-Brown to evaluate her need for gender-affirming  
20 surgery?

21 A Yes. I could only determine that through an interview,  
22 not solely by a review of records. And that was in May of '22  
23 for four hours.

24 Q And have you -- did you ever follow up with her after  
25 that?

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1 A In January '23, I had a phone conversation with  
2 Mrs. Zayre-Brown.

3 Q And about how long did that last?

4 A Approximately 30 minutes.

5 Q And did you review any of Mrs. Zayre-Brown's medical  
6 records?

7 A I reviewed all of the medical records that were provided,  
8 yes.

9 MR. DAVIDSON: Your Honor, we'd move that Dr. Ettner  
10 be qualified as an expert in the treatment of gender dysphoria  
11 and be able to testify on that subject and her examination of  
12 Mrs. Zayre-Brown.

13 MR. RODRIGUEZ: No objection, your Honor.

14 THE COURT: All right. I'll so find.

15 MR. DAVIDSON: Thank you.

16 Q Dr. Ettner, I want to ask you about the concept of medical  
17 necessity, but before I get there, I want to ask you about the  
18 criteria for the eligibility for gender-affirming genital  
19 surgery identified in the WPATH Standards of Care.

20 Could you please explain the difference between an  
21 individual with gender dysphoria being eligible for such  
22 surgery and it being medically necessary for them?

23 A Yes. It's necessary that individuals who are considered  
24 for surgery meet certain eligibility criteria. Meeting those  
25 criteria does not mean that surgery is medically necessary for

## EXAMINATION OF RANDI ETTNER

1 an individual. That is an assessment that has to be undertaken  
2 by a qualified mental-health professional with experience and  
3 who meets the qualifications that are outlined in SOC-7, in  
4 Section 7.

5 Q So do the WPATH Standards of Care provide that all medical  
6 and surgical procedures that a patient is eligible for are also  
7 medically necessary for that patient?

8 A No.

9 MR. DAVIDSON: Okay. I'd like to call your attention  
10 to page 105 of Version 7 of the WPATH Standards of Care.

11 Actually, could you go back one page -- oh, no, that was  
12 it.

13 Q That highlighted portion, that says -- is that -- it says,  
14 "Criteria for genital surgery, two referrals." So is this  
15 going to discuss the WPATH Version 7 criteria for surgery --  
16 for patients with gender dysphoria for genital surgery?

17 A Yes.

18 MR. DAVIDSON: And if we could scroll down to the next  
19 page.

20 Q And what's underlined there, it says, "metoidioplasty or  
21 phalloplasty in FtM patients and vaginoplasty in MtF patients."  
22 What is an MtF patient?

23 A A patient who was assigned male at birth, but has  
24 transitioned to their affirmed female gender.

25 Q So would that be like Mrs. Zayre-Brown?

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1 A Exactly.

2 Q And this described vaginoplasty, the criteria for that --  
3 to be eligible for that, are the criteria for vulvoplasty the  
4 same as the criteria for vaginoplasty?

5 A They are, yes.

6 Q Okay. Looking at those six criteria listed there -- we  
7 don't have to run through them all one by one, but if you could  
8 look at them and let me know -- February 17th, 2022, did  
9 Mrs. Zayre-Brown meet all of those criteria to be eligible for  
10 gender-affirming genital surgery?

11 A Mrs. Zayre-Brown met and exceeded the criteria for  
12 eligibility.

13 Q And was that also the case when you last consulted with  
14 her in 2023?

15 A Yes.

16 Q And would that also be true with respect to the criteria  
17 required to be an acceptable candidate for gender-affirming  
18 genital surgery that are in the eight version of the WPATH  
19 Standards of Care?

20 A Yes, that would also be true.

21 Q So having discussed Mrs. Zayre-Brown's eligibility for  
22 gender-affirming surgery, which you said is necessary but not  
23 sufficient for such surgery to be medically necessary, I want  
24 to move to the topic of medical necessity itself.

25 Do the WPATH Standards of Care discuss the concept of

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1 medical necessity?

2 A Yes.

3 Q And do the WPATH Standards of Care themselves define  
4 medical necessity?

5 A They refer to the American Medical Association's  
6 well-accepted standard of -- and definition of what is medical  
7 necessity.

8 MR. DAVIDSON: Okay. I'd like to show you a page of  
9 the eighth version of the WPATH Standards of Care. It's been  
10 marked here at Plaintiff's Exhibit 2. And I'd like to turn  
11 your attention to page S-16.

12 Scroll down a little. Yes, there.

13 Q In -- under Statement 2.1, after the bolded material in  
14 the right-hand column, it says, "Medical necessity is a term  
15 common to healthcare coverage and insurance policies globally.  
16 A common definition of medical necessity as used by insurers or  
17 insurance companies is" -- quote -- "healthcare services that a  
18 physician and/or healthcare professional exercising prudent  
19 clinical judgment would provide to a patient for the purposes  
20 of preventing, evaluating, diagnosing or treating an illness,  
21 injury, disease, or its symptoms and that are, A, in accordance  
22 with generally accepted standards of medical practice, B,  
23 clinically appropriate in terms of type, frequently, extent,  
24 site, and duration, and considered effective for the patient's  
25 illness, injury, or disease" -- below -- sorry. It's continued

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1 on to the next page. "And, C, not primarily for the  
2 convenience of the patient, physician, or other healthcare  
3 provider and not more costly than an alternative service or  
4 sequence of services at least as likely to produce equivalent  
5 therapeutic or diagnostic results as to the diagnosis or  
6 treatment of that patient's illness, injury, or disease."

7 Is that what you were referring to as the AMA definition?

8 A Yes.

9 Q And at the end of that paragraph, it says "American  
10 Medical Association," comma, "2016." Does that mean that what  
11 the WPATH Standards of Care is quoting from is the AMA  
12 definition of medical necessity? Correct?

13 A Yes.

14 Q And is that a definition of medical necessity that is only  
15 about gender dysphoria and gender-affirming surgical treatments  
16 or is it about all forms of treatment?

17 A It's a broad umbrella encompassing all forms of treatment.

18 Q And are you aware of the current AMA definition of medical  
19 necessity?

20 A Yes, I have read the current definition.

21 Q And are there any substantive differences between the AMA  
22 2016 definition of medical necessity quoted here and the AMA  
23 definition currently in place with regard to the provision of  
24 gender-affirming surgery to individuals with gender dysphoria?

25 A No, no substantive difference.

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1 Q And in your experience, is the AMA definition quoted here  
2 consistent with how the term "medical necessity" is generally  
3 understood in the field of medicine?

4 A Yes, that's my understanding.

5 Q So could you please summarize, what are the central  
6 components of whether a particular treatment is medically  
7 necessary for a particular patient at a particular time?

8 A If a -- on a case-by-case basis, an individual is  
9 suffering from a healthcare condition, and there is a treatment  
10 that a prudent physician believes is to be medically indicated  
11 for that patient, then that -- and that physician or that  
12 provider considers that to be vital for that particular  
13 patient, that would be medical necessity.

14 Q So in your expert opinion, based on your review of  
15 Mrs. Zayre's medical records and your in-person and telephonic  
16 examinations and consultations with her, would a healthcare  
17 provider exercising prudent clinical judgment have to conclude  
18 that gender-affirming genital surgery is medically necessary  
19 for Mrs. Zayre-Brown for the purpose of treating her gender  
20 dysphoria?

21 A Yes, that is my opinion.

22 Q And would, in your expert opinion, a surgeon providing  
23 Mrs. Zayre-Brown gender-affirming genital surgery to treat her  
24 gender dysphoria be in accordance with generally accepted  
25 standards of medical practice?

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1 A Yes.

2 Q And would it be effective for treating her gender  
3 dysphoria?

4 A Absolutely effective.

5 Q And would it be primarily for her convenience or the  
6 convenience of her healthcare provider?

7 A No.

8 Q Is there an alternative service or sequence of services at  
9 least as likely to produce equivalent therapeutic results with  
10 regard to her gender dysphoria as gender-affirming genital  
11 surgery would be?

12 A There's no alternative intervention. Mrs. Zayre-Brown is  
13 a woman. She lived as a woman in the community for years  
14 before her incarceration. She is a wife. She is a mother.  
15 She lives among women now, and she has the same hormones as  
16 women who are of her same age, her peers, her female peers.

17 And yet she has this male organ, this detested organ,  
18 which causes her intractable distress. And nothing other than  
19 removal of the phallus and the creation of typical,  
20 female-appearing genitals, which would be accomplished with  
21 vulvoplasty, would not only attenuate her gender dysphoria, but  
22 it would cure her gender dysphoria.

23 Q So in your expert opinion, according to the definition of  
24 medical necessity cited by the WPATH Standards of Care, was the  
25 provision of vulvoplasty to Mrs. Zayre-Brown medically



## EXAMINATION OF RANDI ETTNER

1 necessary on February 17th, 2022?

2 A Yes.

3 Q And that's also true according to the general  
4 understanding of medical necessity in the field of medicine,  
5 correct?

6 A Yes.

7 Q And was that also true at the time of your last contact  
8 with Mrs. Zayre-Brown in 2023?

9 A Yes.

10 Q I want to ask you some questions about whether certain  
11 circumstances must exist for treatment to be considered  
12 medically necessary.

13 As the term "medically necessary" is defined in the AMA  
14 definition that was contained in WPATH's Standards of Care 7,  
15 is -- is -- are -- I'm sorry.

16 Is actively having plans to commit suicide required for  
17 gender-affirming genital surgery to be medically necessary for  
18 a patient with gender dysphoria?

19 A No.

20 Q How about suicidal ideation?

21 A No.

22 Q Is engaging in self-harm required under that definition of  
23 gender-affirming genital surgery --

24 A No.

25 Q -- for the surgery to be medically necessary? Sorry.

## EXAMINATION OF RANDI ETTNER

1 A No.

2 Q Is ideation about engaging in self-harm required?

3 A No.

4 Q Is evidence of depressive or destructive behaviors  
5 required?

6 A No.

7 Q Is it required that the individual not be able to work or  
8 pursue an education or socialize with others?

9 A No.

10 Q Is it required, under the definition of medical necessity  
11 cited in the WPATH Standards of Care, for an incarcerated  
12 individual to fail to be well-adapted to the environment of  
13 their incarceration for such surgery to be medically necessary  
14 for them?

15 A There's not a requirement, no.

16 Q And is it required, under the definition -- the AMA  
17 definition referred to by the WPATH Standards of Care, for a  
18 patient's gender dysphoria to be severe for it to be medically  
19 necessary for them to obtain gender-affirming genital surgery?

20 A No, it is not.

21 Q Is it required that it be debilitating?

22 A That is not a requirement under the Standards of Care.

23 MR. DAVIDSON: And if you look again at what we --  
24 we're looking at on page -- is --

25 Scroll up.

## EXAMINATION OF RANDI ETTNER

1 Q At 16 and 17 -- if you look at that again, the quote  
2 there, it has to be that a physician or health professional  
3 exercising prudent clinical judgment would use this and that  
4 that would be in accordance with generally accepted standards  
5 of practice and clinically appropriate and not for the  
6 convenience. Does it reference there at all that the symptoms  
7 had to be severe?

8 A No, it doesn't reference it.

9 Q But in any event, was Mrs. Zayre-Brown's gender dysphoria  
10 severe on February 17th, 2022?

11 A Yes. Ten days prior to that, it was -- there was a note  
12 stating that her gender dysphoria was at a 10 out of 10 and  
13 that she was very anxious and experiencing a lot of anatomical  
14 distress around her phallus.

15 Q And was it the case that her gender dysphoria was severe  
16 when you last spoke with her in 2023?

17 A Yes.

18 Q And what leads you to conclude that, despite the treatment  
19 she'd received, Mrs. Zayre-Brown's gender dysphoria was severe?

20 A Well, in addition to my assessment with her, one of the  
21 barometers of severe gender dysphoria is when an individual  
22 thinks about removing their genitals or actually harms their  
23 genitals because they experience so much distress about having  
24 this inappropriate organ that they must look at when they  
25 urinate, when they shower. It's a constant reminder that they

## EXAMINATION OF RANDI ETTNER

1 are what we used to call trapped in the wrong body.

2 And Mrs. Zayre-Brown did attempt to injure her phallus.  
3 She tied a band around the base of the penis to strangulate the  
4 penis and stop the blood flow, which could have been a serious  
5 condition.

6 And she -- her medical records are peppered with her  
7 gender distress. Her -- at one point in 2021, she says that  
8 she's losing her ability -- her coping skills. She's beginning  
9 to show an erosion of her resilience.

10 She's basically a well-adjusted woman, but gender  
11 dysphoria intensifies with time and with age. And as time goes  
12 on, the gender dysphoria becomes more intense, and an  
13 individual has no way to resolve it on their own absent  
14 surgery.

15 Q You said that over time, gender dysphoria increases with  
16 age. Why is that?

17 A As people age, they secrete -- they begin to secrete more  
18 cortisol, and that degrades the DHEA and some other hormones,  
19 sex steroid hormones, causing a destabilization not unlike what  
20 happens to some non-transgender women at menopause. There's a  
21 change in the hormonal regulation as gender dysphoric  
22 individuals age. And so we see this exacerbation of the  
23 distress as time goes on.

24 Q So was Mrs. Zayre-Brown's gender dysphoria well-controlled  
25 on February 17th, 2022?

## EXAMINATION OF RANDI ETTNER

1 A No, it was not.

2 Q And in your consultation evaluation of her when you met  
3 with her and talked to her on the phone and in view of her  
4 medical records, had she attempted suicide in the past?

5 A She had, and she had four episodes of being put on suicide  
6 watch.

7 Q And did those records in her evaluation -- your evaluation  
8 of her when you met with her and spoke with her on the phone,  
9 did they show she was suffering from severe gender dysphoria?

10 A Yes, they did.

11 Q And --

12 A She had severe gender dysphoria.

13 Q And that it appeared she had severe anxiety, as well?

14 A She had anxiety that we talked about on the phone  
15 conversation. And yes, there is evidence of the dysphoria and  
16 the anxiety that are attendant to the dysphoria, not comorbid  
17 conditions.

18 Q And if Mrs. Zayre-Brown does not receive gender-affirming  
19 genital surgery, will she continue to suffer?

20 A She will continue to suffer, yes.

21 MR. DAVIDSON: No further questions, your Honor.

22 THE COURT: Cross.

23 **CROSS-EXAMINATION BY MR. RODRIGUEZ:**

24 Q Dr. Ettner, can you hear me?

25 A Yes.

## EXAMINATION OF RANDI ETTNER

1 Q You can't see me -- or maybe you can see me. I'm not  
2 sure. I'm Orlando Rodriguez, one of the lawyers for the  
3 defendants. We met up in Chicago in the summertime. How are  
4 you doing?

5 A I'm okay. Thank you. I recall meeting you then.

6 Q I want to just ask you a couple of very brief questions.

7 We talked -- I think you mentioned earlier that the  
8 Standards of Care, either 7 or 8, they themselves don't provide  
9 for a definition of medical necessity, but rather refer to the  
10 AMA's definition. Is that right?

11 A That's right, although they produced, in 2008 and in 2016,  
12 policy statements concerning medical necessity. But yes, they  
13 do use the definition that was referenced earlier.

14 Q Okay. And that definition that was referenced earlier  
15 that was in Statement 2.1 of SOC-8, correct, that Mr. Davidson  
16 asked you some questions about, that statement, that  
17 definition, that framework for medical necessity, it requires  
18 an individual, case-by-case application, does it not?

19 A Yes.

20 Q And that application is to be done by the medical  
21 providers that are charged with either approving or providing  
22 the care, correct?

23 A It's typically done by a mental-health professional who  
24 makes that assessment and not by a committee of individuals,  
25 but by what the Standards of Care call a qualified

## EXAMINATION OF RANDI ETTNER

1 mental-health professional. And in SOC-7, they specified the  
2 criteria that one must meet in order to be qualified to opine  
3 on this specialized area of medicine.

4 Q And that's to be qualified as far as WPATH concerns itself  
5 as to considering folks to be qualified?

6 A Correct.

7 MR. RODRIGUEZ: I don't have any further questions,  
8 your Honor.

9 THE COURT: Okay.

10 MR. DAVIDSON: Nothing further, your Honor.

11 THE COURT: All right. Thank you, Doctor.

12 (Witness excused.)

13 THE COURT: Anything further?

14 MR. RODRIGUEZ: No, your Honor.

15 THE COURT: Okay. Brief argument.

16 MR. RODRIGUEZ: Yes, your Honor. I was about to  
17 request that, if your Honor permitted. I will be -- I will be  
18 brief.

19 Your Honor, at the top of the hearing this afternoon, you  
20 mentioned that this hearing was -- you were concerned about the  
21 process, the process that was followed, whether there was a  
22 process, and whether that process was a genuine process.

23 And I believe that the evidence that you heard today, your  
24 Honor, confirms what was demonstrated throughout discovery and  
25 the depositions, and that is that there was a process, there is

1 a process, and that process is and has been that individuals  
2 who request gender-affirming services receive a case-by-case  
3 review by a committee of qualified medical professionals.

4 A chief psychiatrist, a chief medical officer, a chief  
5 psychologist, and other nonclinical individuals convene to --  
6 after reviewing individuals' records, a comprehensive review of  
7 those records, and they make their own determinations.

8 The position statement that we spent a good bit of time  
9 examining the witnesses about, it's a distraction, your Honor.  
10 The position statement was a draft that was never formalized  
11 and never adopted. It was a -- it did not -- it was not  
12 intended by Dr. Campbell -- as he testified here to today, it  
13 was not intended to eliminate or foreclose the individualized  
14 consideration that the DTARC had been doing, was doing, and  
15 continues to do. It was, in fact, shelved because of the  
16 perception that it could be eliminating that individualized  
17 consideration. And that is the very reason why the Department  
18 did not proceed in further discussions with respect to that  
19 position statement.

20 Each one of the defendants that testified today --  
21 Dr. Peiper, Sheitman, and Campbell -- they each testified as to  
22 their individual work reviewing comprehensive medical records  
23 and coming to their own determinations based on their own  
24 professional education, background, and training.

25 That determination, whether your Honor or anyone else



1 disagrees with it, was arrived at in good faith and pursuant to  
2 a process that is individualized and case by case.

3       And that process is what the WPATH standard refers to.  
4 When it refers to the AMA standard as -- for medical necessity,  
5 that AMA standard is a general statement. It doesn't provide a  
6 set of rules that are to be followed in any one given case.  
7 They are a set of aspirational statements about what should be  
8 looked at when a provider is determining medical necessity.

9       And that's what the DTARC does. It brings together two  
10 chief mental-health professionals and a chief medical officer  
11 to conduct that analysis.

12           THE COURT: But nobody is an expert in this particular  
13 area. In other words, there's nobody -- North Carolina has not  
14 put anybody on that committee that's an expert in this very new  
15 type of area in terms of, you know, people in prison asking for  
16 this kind of surgery. It's a -- it's one in which there is --  
17 there's -- there's a lot of different sorts of feelings.

18       But, I mean, Dr. Campbell even put something about  
19 teenagers in there and some personal concern, I guess, about  
20 the fact that there may be some attempt to -- and I think there  
21 are some elements of the movement that would push for children  
22 to -- to be -- children don't even know what they want to do  
23 until they -- I mean, you can't -- people change all the way  
24 through puberty and into adulthood. So that -- that's a whole  
25 different thing.

1 But it's obvious Dr. Campbell has a problem with that.  
2 And I'm wondering whether -- does he have a blind spot about it  
3 or something? I don't know. What --

4 MR. RODRIGUEZ: Well, your Honor --

5 THE COURT: I mean, that's a -- that's a -- and the  
6 others -- you know, the others have found -- all the medical  
7 information is Dr. Campbell. And the others are -- they're in  
8 the committee, but, you know -- I'm not saying the committee is  
9 just a bunch of fakers up there. These are people who are  
10 working for North Carolina.

11 But they're handed a very -- a situation in which some  
12 people are uncomfortable with what this whole thing is, whether  
13 or not they -- the -- when you're cutting off working body  
14 parts that are otherwise healthy, except for the mental aspect  
15 of it.

16 MR. RODRIGUEZ: Yes, your Honor. And I think, with  
17 respect to Dr. Campbell, I can't speak to his intentions. He  
18 was here today to provide his testimony to the Court and  
19 address questions that were posed to him from both sides.

20 What I can say is that the record is quite clear that the  
21 position statement itself was not shared or circulated until  
22 after the decision was made, and that each of the witnesses  
23 testified that the medical literature review that Dr. Campbell  
24 did author in that position statement, that that wasn't the  
25 driving factor in the determination to not approve the request.

1           What was the driving factor was the review of the records,  
2 which Dr. Peiper and Dr. Sheitman and Dr. Campbell each did  
3 independent of one another and arrived at their own assessment.

4           THE COURT: Well, he did share -- he did share with  
5 Dr. Peiper. He did just -- just between the two of us.

6           MR. RODRIGUEZ: He did, and that was the evening after  
7 the DTARC meeting, and it was for the purpose of including the  
8 background information on the medical-literature review as part  
9 of the case summary. And that was also referenced in the final  
10 -- in the final -- in the final record that was put into her  
11 health chart.

12          And I think the point there to harp on, your Honor, is  
13 that it was not the medical literature that determined that she  
14 should not have this surgery because each one of them testified  
15 that, if their review, irrespective of the literature,  
16 indicated that the symptoms were such that warranted further  
17 intervention, they would have counseled in that direction,  
18 regardless of the literature.

19          That's what I meant when I said that the literature review  
20 in the position statement is a distraction. It's an  
21 unfortunate distraction, and we have spent a lot of time  
22 discussing -- and one I recognize --

23          THE COURT: They both -- everybody had the literature.  
24 I mean, the last -- the second-to-the-last doctor that got up  
25 here read the literature on it. And the literature comes

1 out -- you know, comes out sort of half and half about that.

2 And then you -- but North Carolina has -- has North  
3 Carolina sent them and gotten the opinion of some transgender  
4 experts, and then they -- the transgender people come in and  
5 say it's necessary, and they go no, no, it's not.

6 MR. RODRIGUEZ: So I'm glad your Honor raised that  
7 point. I didn't mean to interrupt.

8 THE COURT: No. Go ahead. That's okay.

9 MR. RODRIGUEZ: Your Honor, as to that point, there's  
10 two things I want to discuss about that.

11 Your Honor is correct in the committee currently does not  
12 have what would be considered a WPATH-certified type of --

13 THE COURT: I mean, that would seem to me to be  
14 something you'd want to do. This is very different than an  
15 appendectomy or a -- or -- or a -- any other kind of surgery.  
16 This is a -- this is a one-out kind of thing. This is  
17 something that is very, very different because the medical  
18 necessity comes from a mental problem with regard -- with  
19 gender identity. This is -- it's a totally -- one thing. And  
20 then we got these guys in there who are making this call and  
21 going -- and then you've got that position paper. I -- anyway.

22 MR. RODRIGUEZ: Your Honor, if I may briefly address  
23 that point.

24 The DTARC -- the multidisciplinary aspect of the DTARC is  
25 meant to address the novelty and complexity of this particular

1 situation. I'm not going to stand up here and say that it's a  
2 perfect process, but --

3 THE COURT: And it's tough because they're in prison.  
4 And if they were out of prison, they could go to Chapel Hill --

5 MR. RODRIGUEZ: Right.

6 THE COURT: -- and get the surgery. But they're in  
7 prison, and they want the taxpayers to pay for it. And, of  
8 course, you don't want people going to prison so they can get  
9 their surgery paid for.

10 MR. RODRIGUEZ: And the Department has made efforts,  
11 which it's documented throughout this case, to learn about this  
12 particular issue. They referred her out to UNC Transhealth for  
13 a consultation so that they can get input. And the input they  
14 received was, according to WPATH, she meets the criteria.

15 We've never disputed that point that she meets the  
16 criteria for surgery. What WPATH, however, does not supply is  
17 the next step of the analysis, which is, in this particular  
18 case, is it medically necessary?

19 THE COURT: And the Court -- you know, where the Court  
20 is right now is trying to figure out -- the Court can't come up  
21 with -- is not in a position to decide that aspect of it,  
22 whether it's medically necessary or this testimony from this  
23 doctor that says it is. I've heard what this committee said,  
24 that it's not.

25 What this Court is trying to find out is, was there enough

1 of a fair process? Were the members of the committee as it was  
2 constituted so open-minded that, if they were judges on this  
3 court, that the litigants in front of it would feel like they  
4 were getting a fair shake? If not, then that's not the way --  
5 then it shouldn't go that way.

6 That's what the Court is looking at. If I was going in  
7 front of that Court, would I feel like I had a good, fair shake  
8 of it or was I going in front of a Court that had already made  
9 a decision? I mean, we got courts like that. I mean, you can  
10 go on up the ladder, and I can point out some that I think  
11 don't -- are -- have already made decisions on certain things.

12 So it's not just -- that's not just to committees and  
13 stuff. But that's what I'm wrestling with. It's obvious  
14 Dr. Campbell has served the country. He's been a -- he may be  
15 perfectly well for a thousand different things. My question is  
16 if he's the right guy on this. I don't know. I got to think  
17 about it.

18 MR. RODRIGUEZ: Yeah. And, your Honor, just the last  
19 word I would say is that we would submit that it's been a  
20 pleasure representing these three individuals and the other  
21 members of the DTARC that are doing the best that they can with  
22 the information they had. And there's no reason in my mind to  
23 believe that they did nothing but give a fair assessment of  
24 this situation and provided their best clinical judgment at the  
25 time with the information they had.

1           THE COURT: Thank you very much. Appreciate -- and  
2 good presentation by both sides, by the way. I'm not  
3 criticizing any of the presentation.

4           Let me hear from you.

5           MS. MAFFETORE: Thank you, your Honor.

6           Much as has been made about the fact that Dr. Campbell's  
7 position statement was not ultimately adopted by the DTARC, but  
8 the fact remains that, at that time Mrs. Zayre-Brown's case was  
9 under consideration on February 17th, 2022, that position  
10 statement represented his views, his concerns, and  
11 considerations as he testified regarding gender-affirming  
12 surgery at that time. It reflected what he believed at that  
13 time, that, based on the state of the literature, it would be a  
14 violation of his professional oath to first do no harm to  
15 approve a surgery.

16          Regardless of whether or not the DTARC ultimately adopted  
17 that position, sometime later in March, when that decision was  
18 before the DTARC, that is the position that Dr. Campbell held.  
19 And that is the position that he boiled down into paper nearly  
20 verbatim into Mrs. Zayre-Brown's case summary when he  
21 determined gender-affirming surgery was not medically necessary  
22 for her.

23          THE COURT: I know that a lot of things -- in Social  
24 Security cases and lots of things they look at the -- they look  
25 at the record and they look at what the records are. And in

1 trying to explain it, they look at what the evidence of it is.

2       And at that times that -- it appears that many of the  
3 times -- maybe not all the times, but many of the times when  
4 Ms. Brown was opining that she was having 10 and 11 dysphoria  
5 levels at that, that the observation of the person who was  
6 putting that down was saying, look, she seemed to be calm and  
7 fine and dressed appropriately and all of those things and not  
8 -- not displaying any type of mental acute -- mental acuity in  
9 terms of trouble, anxiety. She was saying she was, but they  
10 were looking at her and going, well . . .

11           MS. MAFFETORE: And, your Honor, in certain  
12 circumstances, maybe Mrs. Zayre-Brown was able to hold it  
13 together in front of her providers while she was conveying the  
14 degree of her distress that she felt between the incongruence  
15 between the body she has and who she knows to be.

16       But we have other evidence in the record, your Honor, that  
17 you -- you noted in your order of instances where she was not  
18 able to hold it together, where she did present to her  
19 providers that she was not doing well. She had to be placed in  
20 inpatient treatment. She was placed on self-injury risk  
21 assessments multiple times.

22       And it is not the case that any person who is suffering  
23 from any kind of disability is having their worst day all the  
24 time.

25           THE COURT: And we -- and I'm not saying it from the



1 standpoint -- I'm not making -- I'm not making a call in this  
2 case right now as to whether or not there's medical necessity  
3 here. What I'm trying to determine is how that applies with  
4 regard to their -- their decision, the State of North  
5 Carolina's decision through this committee, to deny the  
6 gender-affirming surgery in this case.

7 MS. MAFFETORE: Right, your Honor. And so what we see  
8 is, to the extent that the WPATH Standards of Care are the  
9 authoritative standards of care in this circuit, those  
10 standards of care were largely rejected throughout this process  
11 because the individual charged with applying them believed that  
12 they -- they lacked foundation, that they were not credible.  
13 But what we know from the WPATH Standards of Care is that  
14 somebody is not required to be constantly at the brink of  
15 suicidality in order for surgery to be medically necessary for  
16 them.

17 The review of the medical records and individualized  
18 assessment shows that Mrs. Zayre-Brown was consistently  
19 struggling with her gender dysphoria and consistently  
20 experiencing clinically significant distress.

21 THE COURT: Right, but then -- but then what do you  
22 say about the doctors? I mean, we know what Dr. Campbell is  
23 saying, and then you got the other two. Talk about that.

24 Again, what I'm trying to look at is the process that's  
25 here because it's not -- I'm not making a call on this -- on

1 the -- on whether this is necessary or not.

2 MS. MAFFETORE: Understood, your Honor.

3 THE COURT: I'm trying to just determine whether there  
4 was a -- whether there was a fair process because, if there is,  
5 then -- you know, you can't have the State coming in and having  
6 to battle experts every time. And if we go every -- every --  
7 everybody looking for something in terms of a surgery that they  
8 want the State to pay for, a judge has to make the call on all  
9 of that.

10 The question is -- in this particular case is to whether  
11 or not this particular process was of a nature that the Court  
12 can have confidence in it, that they -- that it had the  
13 earmarks of a fair hearing because people need to understand,  
14 when they go in front of tribunals and judges and such, that  
15 they're getting a fair hearing.

16 MS. MAFFETORE: And, your Honor, I believe the  
17 evidence --

18 THE COURT: I'm not talking about those other two  
19 because there's two other -- it's not just Campbell in here.  
20 It's these other guys.

21 MS. MAFFETORE: I believe the evidence before you  
22 shows that it wasn't a fair process because the standard was an  
23 un-meetable standard that was put forward by both Dr. Peiper  
24 and Dr. Sheitman as they testified before you today.

25 The standard they held Ms. Zayre-Brown to was that she had

1 to be constantly experiencing severe, debilitating gender  
2 dysphoria in order for them to consider giving her surgery.  
3 They testified repeatedly, had she been in a situation where  
4 her gender dysphoria were debilitating and were so severe that  
5 she was on the brink of suicidality, that they would have  
6 considered looking past the mixed nature of the literature, and  
7 they would have approved her surgery in that circumstance.  
8 That is too high a standard. That is not a fair tribunal, as  
9 your Honor put it.

10       And I believe your Honor has recognized repeatedly that  
11 someone need not be on the brink of suicidality in order to  
12 receive care, and there is no other condition for which that is  
13 the standard. So making that the standard for gender  
14 dysphoria, for receiving gender-affirming surgery, is not a  
15 fair standard.

16       Even to the extent that this is considered individualized  
17 as applied to Mrs. Zayre-Brown, the standard is nonetheless  
18 unfair. It is nonetheless not a fair tribunal because they  
19 were holding her to that standard.

20       And they were overlooking all the instances in which she  
21 did present that level of a risk because it wasn't a constant  
22 risk. That flies in the face of the WPATH Standards of Care,  
23 which are authoritative here, but it also flies in the sense of  
24 common sense. And it flies in the face of what you heard from  
25 Dr. Ettner regarding medical necessity generally speaking.

1       So to apply a different standard just to gender dysphoria,  
2 that was not a fair process for Mrs. Zayre-Brown. She has been  
3 suffering and she has been seeking care from the State for six  
4 years now. She has been stalwart and incredible in the way she  
5 has held herself in trying desperately to seek this care, but  
6 that does not mean that, because she was able to hold her  
7 selves in composure sometimes, that she does not desperately  
8 need this care that she has been fighting for the entire time  
9 that she's been incarcerated, your Honor.

10           THE COURT: Okay. Thank you.

11           All right. Thank you --

12           MS. MAFFETORE: And I'm sorry. One more thing. I  
13 would just like to note that, as you mentioned, your Honor,  
14 they did refer her out to experts that do apply the standards.

15           THE COURT: I know they did. Her papers are clear  
16 about all that. I just brought that up on this --

17           MS. MAFFETORE: Thank you, your Honor.

18           THE COURT: All right. Yeah.

19           All right. Thank you all. Thank you very much.

20           (End of proceedings.)  
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C E R T I F I C A T E

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I, DEBORAH COHEN-ROJAS, Federal Official Court  
Reporter for the United States District Court for the Western  
District of North Carolina, a Registered Diplomate Reporter,  
Certified Realtime Reporter, and Federal Certified Realtime  
Reporter, do hereby certify that I reported by machine  
shorthand the foregoing proceedings contained herein on the  
aforementioned subject on the date herein set forth, and that  
the foregoing pages constitute a full, true and correct  
transcript.

Dated this 21st day of February, 2024.



DEBORAH COHEN-ROJAS  
RDR, CRR, FCRR  
Federal Official Court Reporter